Abel 4. — Judge Davis —

2-684

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 136.

JOHN GARSED, APPELLANT,

vs.

WILLIAM A. BEALL AND JEREMIAH BEALL, AS SURVIVING COPARTNERS OF WILLIAM A. BEALL, JEREMIAH BEALL, AND THOMAS S. METCALF.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED JANUARY 22, 1874.

Affirmed —

Jus Clifford

to write

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1 At a stated term of the circuit court of the United States of America for the southern district of Georgia, held at the United States court-rooms, in the city of Savanah, on Saturday, the 16th day of December, in the year of our Lord one thousand eight hundred and seventy-one.

Present, the honorable John Erskine, district judge.

WILLIAM A. BEALL AND JEREMIAH BEALL, complainants, *and* JOHN GARSED, THOMAS S. METCALF, AND George Schley, defendants. } In equity.

APRIL 15th, 1867. John Garsed, one of the defendants, files a certified copy of the proceedings in the above-stated cause as had in Richmond superior court, State of Georgia, in the words and figures following, to wit:

RECORD FROM RICHMOND SUPERIOR COURT.

STATE OF GEORGIA,
Richmond County:

To the honorable James S. Hook, judge of the superior courts of
2 the middle circuit, and holding jurisdiction in chancery:

Humbly complaining, shew unto your honor, your orators, Jeremiah Beall, of the county of Baldwin, and William A. Beall, of the said county of Richmond, in said State of Georgia, that heretofore, to wit, on the day of June last past, and for a long time previously thereto, and continually since that time, your orators were, and now are, joint owners with one Thomas S. Metcalf, also of said county of Richmond, each party owning the equal one-third undivided part of a large number of bales of cotton, stored as follows, to wit:

At Eufaula, Alabama	1,406	bales.
At Dawson, Georgia	1,194	"
At Cuthbert, "	10	"
At Fort Gaines, "	6	"
At Albany, " (Cook & Co.)	2,556	"
At " " (Sims & Rust)	3,522	"
Total	8,694	"

And that your orator, William A. Beall, was and is in like manner equal joint owner with said Thomas S. Metcalf of eleven hundred bales of cotton stored at Americus, in said State of Georgia, making a total of cotton owned and possessed as aforesaid of nine thousand seven hundred and ninety-four bales, or some such large number, and of the value of two millions of dollars, or some such large value. Your ora-
3 tors did not imagine, until since the date first aforesaid, and until the attempt to seize and remove said cotton, as hereinafter set forth, that any other person or persons pretended to have any conflicting interest in or claim to said cotton, or to any portion thereof. But one George Schley, of said county of Richmond, and one John Garsed, now in said State of Georgia, but, as your orators are informed and believe, a non-resident thereof, to the great surprise of your orators, are

now seizing and removing said cotton for their own benefit and under some pretended military order; and that said Thomas S. Metcalf, under fear of bodily harm, is deterred from any effort to prevent such seizure or removal, and under such fear refused to join your orators in asserting their plain and undoubted rights according to the laws of the land, and preventing the most wicked, unlawful, and oppressive destruction of their joint property in the premises. In view of the great interests involved, as well as of the great oppressions and persecutions which, under false pretenses, have already been inflicted, and of the fearful threatenings now made as intended to be visited upon all who shall attempt, according to the laws, to prevent such wicked, unlawful, and oppressive seizure and removal, your orators have made diligent enquiry, and now proceed to set forth to your honor the facts, real and pretended, upon which these wrongs and oppressions are pretended to be founded.

4 The said Thomas S. Metcalf owned a large number of bales of cotton in the city of Augusta, and in said county of Richmond, which was removed by one D. H. Hill, commanding then in that city, into the streets and on the commons, and left scattered and unprotected. Your orators had no interest whatever in that cotton. Said Metcalf agreed to give said George Schley and some other person a large interest to gather up and remove said cotton to proper shelter. Said Schley and other person removed about four thousand bales thereof, and thereby became entitled to the one-third thereof.

Afterwards, in the month of June last past, said Schley proposed, for himself and the said Metcalf, to sell the said cotton to the said John Garsed, the price of the interest of said Schley to be eighteen cents per pound in gold, and of the interest of said Metcalf twenty-five cents in currency, but said Metcalf to receive only one hundred dollars per bale in currency. But said Metcalf knew nothing of this division by said Schley of an undivided interest, but agreed and supposed the entire lot of cotton was sold at one hundred dollars per bale. Said John Garsed agreed to proceed to the city of Philadelphia and report by telegraph by the sixth day of July whether he would accept the offer as proposed.

5 After these terms were thus arranged, said Metcalf stated to said Schley that he knew of another very large lot of cotton stored in Southwestern Georgia, which he thought could be bought as it stood, and at old weights, for twenty cents per pound, if the money was there to be paid that day, putting emphasis on the words that day. Of this large lot, in which said Schley had no interest, and of which he knew nothing, said Metcalf furnished to said Schley a memorandum in writing to enable him to ascertain whether, if the parties in interest were willing to sell, the said Garsed was willing to buy said large lot also; which memorandum was in the following words and figures, after setting forth the bales as above, to wit: "Believed to be in very good order as a whole lot, and to average 500 lbs. to the bale. They belong to and were bought by a large planter in Southwestern Georgia, and can this day be bought for 20c. in greenbacks. They are mostly crop lots entire, and therefore are desirable for spinners, as cottons in that section are long staple. There is very little doubt but that they can be had at that price a short time hence, if a buyer should come out with the cash and go down and see him and the cotton." Said Schley became very anxious to induce said Metcalf to sell said cotton to said John Garsed through him, the said Schley, at the price named, and to give said Garsed also until the sixth of July to telegraph from Philadelphia whether he would except

6 the offer. Said Metcalf most distinctly said to said Schley that he had no authority to sell said cotton at that price, except on that

day, and with the money paid down on that day; that he had no authority to stipulate a price then to be paid at a future day; that the party could take the memorandum with him to Philadelphia and determine whether he would take the cotton at the market value when he arrived; and that in the opinion of the said Metcalf he would be able to get the cotton at the price mentioned, as he, Metcalf, did not believe the market would advance by that time. But said Metcalf distinctly stated that he could not sell the cotton at less than the market value, nor without the cash paid on the day of sale; and that he could make no other terms without consulting your orators. the other owners of the cotton. And your orators distinctly state said Metcalf had no authority to stipulate any price to be paid at a future day, and the distinct understanding between the owners was that said cotton should not be sold except at the market value on the day of sale, with the cash then paid, and the cotton to be taken in its then condition and at old weights; and it was distinctly agreed and understood that no purchaser was to have the refusal for twenty-four hours, and said memorandum was simply furnished for information and not as an offer—only to inform the party that on that day it could be bought at 20c. per pound; that
7 he believed it could be bought a short time hence at the same price, meaning he believed the market would not advance in a short time; but that at whatever price, on whatever day the parties might agree to take the cotton, the cash must be paid down. And your orators believe and charge that nothing other or contrary to this was ever stated by said Metcalf to said Schley.

But said Schley, being very anxious to make such sale, and having acquired, without the knowledge of said Metcalf, an interest of three cents per pound if he could make such trade for said Garsed, reported to said Garsed that he could get said large lot also if he would telegraph his acceptance by the sixth day of July. The day, or two days thereafter, to wit, on the first day of July, said Schley communicated to said Metcalf that he had so reported to said Garsed, and said Metcalf at once and in the most positive manner replied to said Schley that he had no authority to make any such statement to said Garsed, and that he, Metcalf, had not made any such sale of the cotton, and could and would not make any such sale, and had no authority to make such a sale, and rehearsed to said Schley what he had said. Said Schley admitted or pretended he had misunderstood said Metcalf, and on that day telegraphed to said John Garsed that he "misunderstood the parties giving sixth on number three, the nine thousand good lot," meaning the cotton of your orators and said Metcalf; and again, on the 8th day of July, said Schley again informed said Garsed by telegraph as follows:
8 "Parties owning the nine thousand bale lot refuse to sell unless funds are here. If here to-day, bargain could be closed, and probably can be on your arrival." This last telegram was and always had been the exact truth, and was so well known to both the said Schley and the said Garsed; and so far from your orators or said Metcalf repudiating a contract they had made because prices afterwards enhanced, as was afterwards falsely alleged, it is shown that all the above facts occurred before there had been any rise in the price of cotton; and the first telegram was sent to said Garsed before it was possible for him even to have reached Philadelphia, and before he could have incurred any possible risk or labor under the false pretense that he had the refusal to take the cotton by the sixth day of July. Said Metcalf supposed certainly there could be no possible doubt on the matter, and your orators were negotiating, and said Jeremiah Beall had negotiated, to sell a

portion of said cotton to other buyers, never imagining any possible doubt as to their right to do so.

A few weeks afterwards, to wit, late in the month of July, said Garsed returned to city of Augusta, and arranged to settle with said Schley for the cotton first mentioned; and said Schley settled with said Metcalf for his portion of said cotton, at one hundred dollars per bale in currency, without even then communicating to said Metcalf that a larger amount had been paid by said Garsed for the cotton, or that said Schley had divided an undivided interest, and sold said cotton at a higher rate, or received any portion of it, the pay, in gold. After this matter was closed up, said Schley, the next day, came
9 to said Metcalf and informed him "these people, or the parties," were going to claim that they had made a trade for the cotton of your orator and the said Metcalf, and that he, the said Schley, was very sorry for it, as it worried him very much; that they were going to take the question before the military, and he had come to know if the matter could not be compromised. Said Metcalf replied that he had made no such trade; that there was no pretence for such a trade; and that he had nothing to compromise, and would not give ten dollars for a compromise. About three days thereafter the orderly of one C. H. Grosvenor, who, claiming as prov'st-mar*tial*-general to adjudge civil matters, carried said Metcalf before said Grosvenor, who informed said Metcalf that he had made a trade for that cotton; that he, Grosvenor, considered all the cotton as included in one trade, and that, as a large number of the bales had been delivered, and the money paid for the portion delivered, he had decided the whole cotton must be delivered. Said Metcalf, utterly astounded—having never dreamed that the cotton of himself and your orators in remote localities had any connection whatsoever with the cotton of said Schley and Metcalf, and being thus informed, as his first notice of such an idea, and in the most positive manner that he, General Grosvenor, had so decided—could do no more than deny the facts and ask for counsel. The request for counsel was granted, and time given until next day for counsel to be heard. The counsel begged for and procured a postponement until next day
10 to enable him to look into the case. Your orator, William A. Beall, was now informed for the first time of this pretended trade and of the decision of said Grosvenor.

During these proceedings, one Mr. Glenn came to Augusta, and for the first time informed said Metcalf and William A. Beall that he had bought three thousand bales of said cotton of Jeremiah Beall, who was in utter ignorance of this pretended claim of Garsed and others in confederation with him. Learning here of these military proceedings, said Glenn made known his purchase to said Grosvenor, when said Grosvenor informed him he would prevent him with bayonets from taking his said three thousand bales, and if he, Glenn, interfered in the matter he would be sent out of the military department of Georgia. Said Glenn also informed said Metcalf that in his (Glenn) interviews with said Grosvenor, he (Grosvenor) said that he (Metcalf) was a great fool for not settling the case with Garsed; that he could compromise with Garsed by paying him one hundred thousand dollars. Alarmed by the arbitrary manner in which the military had taken control of and decided this question, and being assured that the military was absolute, and could and would do as they pleased; seeing also that said Schley and Garsed had in some way obtained the entire confidence of said Grosvenor, and strangely impressed him with their own tale, said Metcalf now, for the first time, began to realize the danger he was in, and entertained the

idea of paying something for a compromise and settlement,
11 though protesting that the claim was unfounded, and that the military authorities could have no jurisdiction of the question. Supposing also, from the remark to said Glenn, that said Grosvenor had authority to settle the matter for said Garsed, and not desiring to have any intercourse whatever with said Garsed, who was pressing so unfounded a claim, and having learned that one Leopold Cohn was known to and had the confidence of said Grosvenor, said Metcalf applied to and authorized said Cohn to take charge of the matter and make a compromise and settlement of the case, which said Cohn expressed a willingness to do.

Said Cohn soon reported that the case could be compromised through Gen. Grosvenor, but that the parties required the sum of two hundred and fifty thousand dollars to settle. This was refused to be given. Said Cohn afterwards reported that they would take two hundred thousand dollars, and urgently advised said Metcalf to give it, as else he would certainly lose much more than that. Your orator, William A. Beall, being fearful that said Garsed and Schley would now having everything as they wished it, and being satisfied that they had succeeded in hopelessly impressing the said Grosvenor with their views, and knowing by this very demand that they were utterly devoid of conscience, and being assured that the military was absolute, and being also assured that the sum asked would be a full compromise and settlement of all the pretended claims of said Schley and Garsed, and willing to lose two hundred thousand dollars rather than to be hope-
12 lessly impoverished by the loss of all, finally agreed to pay the said sum of two hundred thousand dollars as a compromise and settlement of the pretended claims aforesaid, and with no other idea, thought, or design whatever; and it was distinctly stated to be as a compromise and settlement.

The terms being thus settled and complied with, and the sum of eleven thousand dollars in advance, as required, having been paid, the said Metcalf and said William supposed the settlement would be duly announced, and the whole controversy would end; and said Cohn informed said Metcalf that said Grosvenor informed him, Cohn, that Garsed would call on Mr. Metcalf the next morning and close up the matter, when said Metcalf again informed said Cohn that he had desired to have nothing to do with said Garsed, and wished that he would act for him until it was finally settled. So far from the settlement being thus closed up and announced, said Metcalf was suddenly arrested by military order and hurried off to prison; the officer arresting refusing to inform him of the cause of his arrest or to allow him to communicate with any one, even his family, and said such were his orders.

During the afternoon of that day said Metcalf was informed by his counsel that he was arrested for offering a bribe to the military officer, and that Cohn was arrested on the same charge. Your orator, William A. Beall, was informed the next day of this charge of bribery, and this was the first time the idea of bribery ever entered your orator's
13 thoughts, he never doubting, indeed most positively knowing, that he and said Metcalf were only agreeing to pay the said two hundred thousand dollars as a compromise and settlement of the pretended claim of said Garsed, and that of course the parties making the claim would be entitled to the sum paid. They admit it was so much money most unjustly forced from them.

After the settlement was agreed on, and before the arrest, said Cohn said to your orator, W. A. Beall, and the said Metcalf, that he had un-

dertaken the settlement as a friendly act; but as the whole matter was now settled, and he (Cohn) had but little property, if his services had been worth anything he would leave it altogether to them (Beall and Metcalf) whether they would pay him anything. And your orator, Wm. A. Beall and said Metcalf, agreed with themselves that they would make Mr. Cohn some compensation when the matter was finally closed. Your orators and the said Metcalf know nothing of what passed between the said Grosvenor and the said Cohn except as reported to them by said Cohn, and he always spoke to them of it as a settlement of Garsed's claim.

Said Thomas S. Metcalf, being thus informed of the alleged pretence for his arrest, at once and promptly repelled the charge that he had ever thought of offering a bribe to an officer of the U. States, or to any person, or of authorizing such offer by any other person, directly or
14 indirectly. Said Metcalf felt it to be due to himself to make such disavowal at once and in the most positive manner. But the severest personal punishment was now threatened to be visited upon the said Metcalf, and the loss of liberty and the infliction of the most ignominious penalty were to be added to the loss of property. A court-martial was ordered and every preparation made to insure speedy punishment, and the said Metcalf was assured by his friends that there was no power to prevent these great injuries. To avoid these unjust calamities, and to secure his release from prison, being old, over sixty-five years of age, and in bad health, which he felt would be increased unto early death if his imprisonment was continued, said Metcalf executed a writing in the following words, to wit:

"Thomas S. Metcalf wishes it distinctly understood that, in the negotiations in reference to 9,778 bales of cotton claimed to have been sold by him to John Garsed, and the litigation growing out of it, he has never had any intention of offering a bribe to Gen. Grosvenor, who presided in the case, or to any other officer of the United States, nor has he ever intended to intimate to any such officer that he supposed him accessible to any such offer. If such construction has been placed on any act of his, or any act authorized by him, he distinctly disclaims and disavows it. And if anything done or said by him has reflected on the honor
15 or wounded the feelings of General Grosvenor, he regrets the misapprehension, and trusts this will be received as sufficient apology. And while he admits he was disappointed in the decision made in reference to the cotton, he acqu'esces in it, and will take no step to disturb it, having no reason to suppose that the decision was produced by any partial or improper motive."

Your orators are assured and believe that all the foregoing relating to the subject of bribery was freely and voluntarily given, and would have been given without any arrest, but from a sense of right and justice; but your orators are also assured and do believe that so much of the foregoing as binds said Metcalf to acqu'esce in said decison, and to take no step to disturb it, was given most unwillingly, and in absolute duress and bodily fear, and your orators confess themselves unable to see that, while disclaiming any intention of wounding the feelings or honor of the officer, the said Metcalf should have been required to submit to a decision in favor of a party litigant which he believed and indeed knew to have no contract for its foundation, and which he honestly believed and was informed by his counsel the said officer had no jurisdiction to pronounce. And yet the said Metcalf continues in such bodily fear, and for that reason refuses to join your orators in any steps necessary to secure their joint rights in the premises, or to prevent

16 or enjoin said Garsed and his confederates from removing said cotton beyond the limits of said State, which will inflict an irreparable loss on your orators.

The decision to which said Metcalf was thus required to submit is in the following words and figures, to wit:

"HEADQUARTERS DEPARTMENT GA.,
"OFFICE PRO. MAR. GEN.,
"*Augusta, Georgia, August 2nd*, 1865.

"ORDERS.—It appearing that on the 28th day of June, 1865, and after the occupation of the State of Georgia by the military authorities of U. S., and while the civil authorities of the State of Georgia and civil law in suspension, and martial law still being in force, in consideration that one John Garsed would buy of George Schley, Thomas S. Metcalf, Jeremiah Beall, and Amos Beall, citizens of the State of Georgia, a large amount of cotton, to wit, 11,376 bales, and would pay therefor in gold and currency the price hereinafter mentioned, the said George Schley, Thomas S. Metcalf, Jeremiah Beall, and Amos Beall did contract and sell to said John Garsed 2,094 bales cotton, to be delivered in Augusta, Ga., at 25c. per pound, in greenbacks; 600 bales of cotton, to be delivered in Augusta, at 18c. per pound, to be paid in gold; 9,778 bales, stored at various places, to be delivered where stored, at 23c. per pound; which said contract and sale have a condition thereto attached that said
17 Garsed should telegraph his ability and willingness to comply with the terms of contract of sale, which said condition to said contract was fully complied with by the said John Garsed on the 6th day of July, 1865, to the full completion of said contract. The said John Garsed, acting in good faith, and relying on the fulfilment of the terms of said contract, forwarded the money to the city of Augusta, Ga., to the said George Schley, Thomas S. Metcalf, Jeremiah Beall, and Amos Beall, and a large amount of said money, $260,859.80, was, on or before the 25th of July, 1865, received on said contract in payment thereof, and 2,698 bales of said cotton was there and then duly delivered by said parties to the said John Garsed, and thereupon, the price in cotton having greatly advanced, the said George Schley, Thomas S. Metcalf, Jeremiah Beall, and Amos Beall neglected and wholly refused to fulfill the terms of said contract, to the great loss of and damage of the said John Garsed, and he being wholly without remedy in the civil courts of the country:

"It is ordered that the contract heretofore recited shall be strictly executed; and for this purpose it is ordered that the cotton in the following places, belonging to Thomas Metcalf, Jeremiah Beall, and Amos Beall, 1,406 bales, *to* be delivered at Eufaula, Ala., 1,194 at Dawson, Ga., 2,556 bales at H. G. Cook's warehouse in Albany, Ga., 3,522 bales in Sims & Rust's warehouse, Albany, Ga., 1,100 bales in Price's
18 warehouse at Albany, Ga., (Americus meant,) in all 9,778 bales, *to* be delivered to the said John Garsed according to the terms of said contract; and it is ordered that immediate steps be taken by said John Garsed to prepare said cotton for market, under the direction and contract of said George Schley, who will be held strictly responsible for said cotton, to be compressed and stored at such a point contiguous to the lines of transportation to market that may be selected by said John Garsed; and it is further ordered that (30) thirty days be given from the first day of August, 1865, to the said Thomas S. Metcalf, Jeremiah Beall, and Amos Beall to procure a revocation of this order, during which time said cotton shall be re-weighed, and complete

bills of said weight made, under the direction of said George Schley; and that if, on the 1st day of September, 1865, said Thomas S. Metcalf, Jeremiah Beall, and Amos Beall shall refuse to receive the money for said cotton, then said cotton may be shipped by said Garsed to market, and the money-value thereof, on said contract, be deposited to the credit of said Thomas S. Metcalf, Jeremiah Beall, and Amos Beall, in such manner as may be hereafter ordered.

"By command of Maj. Gen. Steedman.

"C. H. GROSVENOR,
Brevet Brig. Gen. and P. M. G."

Your orators further show that said orders are utterly at variance with the facts, and inconsistent with law, right, and justice
19 in very many particulars, a few only of which need be here specified.

1. As a reason for assuming jurisdiction of a question purely civil, and exclusively between citizens, said orders recite that there were no civil courts or civil law in Georgia, and that said John Garsed was "wholly without remedy in the civil courts of the country." Whereas in truth there are civil law and civil courts in Georgia, and not only so, but an able and accomplished judge of the United States courts for the district of Georgia had been appointed, qualified, and commissioned, and was fully competent, and had jurisdiction to hear said cause long before the taking jurisdiction of said cause by the said provost-marti*a*l-general. Besides, in no event had a provost-marti*a*l jurisdiction of questions so purely civil, and exclusively citizens being parties, and where no attempt was being made to inflict irreparable injury; and all the while during the trial of said cause the counsel of said Metcalf utterly contested and denied the right of the military to take jurisdiction of the cause.

2. Said orders recite the three contracts as one, when even the said Schley, before said provost-marti*a*l, distinctly stated they were separate contracts wholly distinct as to parties, subject-matter, and terms, and in no respect connected; and furthermore distinctly stated that there was no contest whatever in relation to the first two contracts, and in which your orators had no interest, and of which they had no knowledge.

20 3. Said orders recite that said Metcalf and your orators neglected and refused to complete their pretended contract, because, in the mean time, prices had advanced; when even said Schley stated distinctly in his testimony that prices "had not advanced between the offer of 28th June and dispatch of 1st July," and the dispatches themselves show that Mr. Metcalf corrected Mr. Schley's mistake in two days, and the very first moment he heard of it.

4. Said orders recite that a portion of money due your orators on said pretended contract had been paid, and all had been raised and forwarded, when the facts distinctly show that not one dollar has ever been paid or tendered, nor is there any proof that one dollar had ever been raised or forwarded even to this day.

5. Said orders recite that a portion of the cotton of your orators had been delivered, when not one lock had been delivered, and your orators pray may never be delivered.

6. Said orders are made judgments against your orators, when neither of them were ever cited to appear, and Jeremiah Beall did not even know of the proceedings.

7. Said orders recite without evidence that said John Garsed had done everything in good faith, and equally without evidence charge your orators and said Metcalf with bad faith.

And notwithstanding the only pretended witness to said pretended

contract was the said George Schley, who claims an interest of
21 three cents per pound, amounting to about one hundred and forty thousand dollars, and which is entirely dependent on the establishing and enforcing of such pretended contract; and notwithstanding said only witness frankly admitted, on the first day of July, that he misunderstood said Metcalf, and promptly communicated such misunderstanding to said Garsed before he had taken any steps on the faith of such pretended contract; and notwithstanding even the said Schley shows that, even as he understood or pretended to understand the contract, said Garsed was to pay the cash down on his arrival in Augusta, and notwithstanding though the said orders in words allowed thirty days for an application to General Thomas to revoke said decision, yet the said Metcalf was required to agree, as a means of getting out of prison, that he would acquiesce in such decision, and not seek to disturb it; and notwithstanding said military authorities have declared that said pretended contracts and acts of said Metcalf bind all the joint owners, and that if they are damaged they must sue him (Metcalf) for damages, and notwithstanding the price of said cotton under said pretended contract was due as soon as said decision was made, and thus forced to be acquiesced in, and said Schley pretended to intimate, and said orders actually recited, that said Garsed had forwarded the money to Augusta, yet by said order said Garsed is permitted to take immediate possession of said cotton and prepare it for shipment, and is allowed
22 until the 1st day of September to pay the money.

But the first day of September has arrived and passed, and still not one dollar of said money has been either paid or tendered, and your orators are informed that another order, as is supposed upon the usual ex-parte application of said Garsed and the said Schley, was passed in the following words and figures, to wit:

"HEADQUARTERS DEPARTMENT OF GA.,
"OFFICE OF THE PRO. MAR. GEN.,
"*Augusta, Ga., August 31st*, 1865.

"In the matter of the contract between John Garsed and others, it is ordered that as transportation cannot now be had for said cotton, that said Garsed, within ten days hereafter, receive from said Thomas S. Metcalf the cotton named in his contract at an estimate of four hundred and fifty pounds per bale, and to pay therefor by drafts on New York at thirty days. On weighing the cotton the balance due will be paid, and Garsed will ship the cotton as early as possible.

"By command of Maj. Gen. Steedman:

"C. H. GROSVENOR,
"*Brevet Brig. Gen. and P. M. G.*"

For some reason this remarkable order was not satisfactory, and on the next day, Sept. 1st, said parties and officers, doing everything as it pleased them, passed another order in the following words and figures, to wit:

"HEADQUARTERS DEPARTMENT OF GA.,
"OFFICE OF THE PRO. MAR. GEN.,
"*Augusta, Ga., Sept. 1st*, 1865.

23 "All orders issued from this office subsequent to August 2d, in relation to the matter in controversy between John Garsed T. S. Metcalf, are hereby revoked.

"By command of Maj. Gen. Steedman:

"C. H. GROSVENOR,
"*Brevet Brig. Gen. & P. M. G.*"

On this order is the following endorsement, (or on the copy furnished:)

"H'DQUARTERS DEP'T OF GEORGIA,
"*Augusta, Sept. 2d*, 1865.

"The foregoing is a true copy of the original order, and is approved.
"JAS. B. STEEDMAN,
"*Maj. Gen'l Commanding.*"

Afterwards another military order was issued, in the words and figures following, to wit:

"HEADQUARTERS DEP'T OF GEORGIA,
"*Augusta, Ga., Sept. 5th*, 1865.

"It appearing that George Schley is ready to proceed at once to have the cotton embraced in the within order put in shipping order at the expense of Thomas S. Metcalf, Amos Beall, and Jeremiah Beall, the said Metcalf and Bealls will put him in possession of copies of the receipts or orders on the several warehouses and places named in the aforesaid order to enable him to get the possession of the same; and it also appearing that John Garsed is ready and willing, as fast as each lot named is delivered to him, after having had the same reweighed and put in shipping order, to pay for the same, it is ordered that said Thomas S. Metcalf, Amos Beall, and Jeremiah Beall forthwith, without delay or prevarication, deliver the said George Schley copies of such warehouse receipts or orders on the several warehouses or places of deposit of
24 said several lots of cotton, as mentioned in the said order of the second of August, 1865, issued from these headquarters, that will enable him to get possession of said cotton free of charge for the storage or otherwise of the same, and that said George Schley proceed to have the same put in shipping order, by putting on new ropes and bagging or repairing the same, as in his judgment may be required, and when so done to receipt the same, the expenses to be charged to the said T. S. Metcalf, Amos Beall, and Jeremiah Beall and when so done to have correct invoices of the same made out; and as fast as each lot in each of the aforesaid warehouses or places of storage is completed, the said George Schley will pay, in Augusta, to the said Thomas S. Metcalf, Amos Beall, and Jeremiah Beall, or such one of them as they may designate in writing to receive and receipt for the same, the amount of each invoice as fast as ready.

"JAMES B. STEEDMAN,
"*Maj. Gen'l Com.*

"To Thomas S. Metcalf, Amos Beall, and Jeremiah Beall."

Thus, a simple memorandum, which was furnished for information by one joint owner, is manufactured, by a person having a heavy interest, into a contract; is decided by a military officer upon an ex-parte showing, on the evidence of such interested person, to be a contract; is consolidated by the force of statement with two other separate, distinct, and different contracts between other parties, and for wholly distinct
25 subject-matters, and which other contracts were executed and carried out without any contest, and with which your orators never had the slightest connection, direct or indirect; and the execution of these different and uncontested contracts is claimed as a part performance of this pretended, disputed, contested, and utterly denied contract. Then, when one of said part owners, alarmed at such monstrous pre-

tentions, and fearing still greater injuries, adopts a suggestion first made by the person who manufactured the contract, and then testified to his own manufacture, and which suggestion was afterwards repeated by the officer presiding in the case, to wit, to pay a large sum of money by way of compromise and settlement, he is charged with offering a bribe, and without a hearing, or even a notice of the charge, is thrown into prison, and, though his disclaimer of all idea of offering a bribe is accepted as satisfactory to the honor of the officer, he is still required, before receiving his liberty, to agree in writing that he will acquiesce in said decision, and will not disturb it, and to add that he has "no reason to suppose that the decision was produced by any partial or improper motive." And though the contract, even as so pretended and manufactured from said memorandum, requires the payment to be cash, and though it is pretended in behalf of the pretended good faith of said John Garsed that the money was forwarded early in July,
26 and the time for its payment has been fixed and refixed, not one dollar has yet been either paid or tendered; and your orators are actually informed and believe that said John Garsed is seeking an order to ship said cotton before payment, doubtless desiring to pay, if he pays at all, from the proceeds of the cotton itself, seeking to make a profit for himself and his confederates of nearly one million of dollars, without having incurred the slightest risk whatever, and without any labor except the labor of setting up a pretended contract, which he knows was never made. And notwithstanding such contract even as pretended and manufactured, required the cotton to be taken in its supposed condition in the warehouses and places where stored, yet an order is now made, without the slightest previous notice to the said Metcalf, that the cotton is to be reroped and rebagged and repaired and put in shipping order by and according to the judgment of the said George Schley, and all at the expense of your orators and the said Metcalfe, even including all storage and every other expense.

And said orders are passed on the application of said Garsed and said Schley, without any previous notice to or opportunity to resist them by said Metcalf or your orators; and your orators are ordered, "without delay or prevarication," to obey orders, though never cited to appear before said officer. And your orator, the said Jeremiah Beall, during all these remarkable proceedings, has been residing in the
27 county of Baldwin, and not once notified of the fearful orders which were so impoverishing him.

On being fully informed of the premises, your orators became satisfied that said John Garsed and George Schley and their secret confederates had wholly deceived and misinformed the said James B. Steedman, commanding the department of Georgia; and having full and undoubting confidence that, when properly informed, said Steedman would promptly revoke all said military orders, and remand the parties to the civil courts, which are actually open and administering the laws in the said State, determined most respectfully to ask of said General Steedman a hearing, which your orators greatly desired should take place in the presence of the said John Garsed and George Schley. But the counsel of your orators had scarcely made known, in the most respectful manner, this desire to said Steedman, before he was informed by said Steedman, in the most positive manner, that neither your orators nor any person in interest with them should ever be heard on the subject; should not even be allowed to talk with him on the subject; that the cotton should be shipped under his order, and that he would "lock up" any person who attempted to prevent it, and that he believed your orators, as well as

said Metcalf, were all rascals, and should not be heard, and that if your orators were damaged they might look to said Metcalf. And
28 when the counsel for your orators expressed his readiness to convince said Steedman that he had been deceived by interested persons, and that it was due to himself to hear all sides, he peremptorily requested him not to talk with him on the subject. And when the counsel then firmly but courteously said that he felt it due to General Steedman, first of all, to give him an opportunity of doing justice, or of preventing injustice being done under his orders, but being thus repulsed, he should feel it his duty to advise your orators to seek proper redress before the civil tribunals, and according to the forms of law, said Steedman declared and continued to repeat that if any judge or State court presumed to grant an injunction against the shipment of said cotton according to his order, or in any manner to interfere with it, he would lock up such judge or court in prison.

Thus, said Garsed and Schley are now actually taking possession of said cotton, and said Thomas S. Metcalf, under military orders, and in bodily fear, is being forced to place them in possession; and your orators are to see their property taken from them on a pretended contract, manufactured by an interested party, under a decision on a civil matter between citizens made by a military officer upon the representation of said defendants, and upon strict certificates, taken without even an opportunity to cross-examine, and on a decision modified and changed at pleasure to suit the convenience of said Garsed and the said
29 Schley, and without any hearing or opportunity for a hearing by your orators. And when your orators respectfully, and even in a spirit of confidence in said commanding general, ask to be heard even in the presence of and in connection with the other party, they are abruptly told they shall not be heard by him, and if they seek redress according to law, and before the established courts, they shall be imprisoned, and that if a judge, according to his sworn duty, shall presume to grant a process in the case simply to protect the property until all the parties can be fairly heard according to the laws, that the said judge also shall be imprisoned!

Your orators deem it their duty to thus fully recite the facts, as, while showing the manifest injury inflicted upon your orators, they also show how completely said Garsed and Schley have, with their own statements, taken possession of said military officers, and how absolutely have succeeded in utterly excluding your orators from being heard, as so to enable them to correct such most mesmeric infatuation.

Your orators expressly charge that said Schley and said Garsed well know that neither the said Metcalf nor your orators even made such a contract as is pretended, or any contract for the sale of said cotton.

That said Garsed never forwarded one dollar from Philadelphia
30 or elsewhere, under such contract. That said Garsed never came to Augusta or brought one dollar to Augusta to execute such pretended contract.

That after arriving in Augusta and closing up the contracts with other parties, and prices had greatly advanced, said Garsed and said Schley, and other secret confederates who keep in the background but are interested in procuring said orders and in deceiving said military officers, combined to set up said pretended contract, with the view of getting money from said Metcalf and your orators by way of compromise.

That, finding the military ready to grant orders to suit them under their deceptions, and that to seize the cotton would be far more profit-

able than accepting the sum which they could get by compromise, and that the said Metcalf, being old, infirm, and alarmed, could be cowed and overcome by converting the willingness to compromise into an offer of bribery, and then, being imprisoned, could be induced to submit to such military orders, and thus enable them to make sure of said cotton on any terms they chose to dictate, the said defendants and their secret confederates did combine to produce said orders and to bring about said charge to procure such submission and to ship said cotton.

That, having succeeded so well thus far, they are now confident of frightening off your orators with imprisonment, through the con-
31 viction of honest indignation which they have most artfully succeeded in producing in the mind of the said commanding general.

And as the result of all such deceptions, pretences, and combinations the said Garsed and the said Schley are actually taking possession of said cotton, and, unless restrained, will remove the same beyond said State, and to the irreparable loss and impoverishment of your orators; all which actings, doings, pretences, combinations, and refusals are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orators in the premises.

In tender consideration whereof, and forasmuch as your orators are wholly remediless at and by the strict rules of common law, and can only have adequate relief in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said John Garsed and George Schley and the rest of their secret confederates, when made parties hereto, may, upon their several and respective corporal oaths, full, true, direct, and perfect answers make to all and singular the premises, and that in said answers they shall also set forth who are aiding them in making the said impressions on the minds of said military officers, and who are the persons interested in procuring said cotton and in enforcing
32 said pretended contract and military orders, and what is the extent of the interest of each, and how much money said Garsed raised and forwarded to Augusta on said contract or pretended contract, and when forwarded and to whom; and that they set forth the names of all persons who, directly or indirectly, have been aiding them in procuring said order or in removing said cotton, or in prejudicing said military officers against your orators and the said Metcalf; and that the said Thomas S. Metcalf, refusing as he does to join your orators, for the reasons stated, as complainant in this bill, may, as defendant hereto, set forth and answer under his corporal oath of all and singular the premises; and that all of said defendants shall make answer of all matters, not only according to their knowledge, but also according to their information, hearsay, remembrance, and belief;

That the said defendants, Garsed and Schley, and their confederates, may be restrained and enjoined from removing said cotton and from all further attempts, under pretext of military orders or otherwise, to take possession of said cotton or in any manner to interfere with the same until the hearing of this cause, and on the hearing that they be perfectly enjoined; and that if the said Metcalf has, by any responsible act, sacrificed the rights of your orators in the premises, that he be required to account to your orators for the true value of their proper dis-
33 tributive interest therein; and that your orators may have such further and other relief as the nature and circumstances of this case may require:

May it please your honor to grant unto your orators the State's writ

of injunction, to be issued out of and under the seal of this honorable court, and to be directed to the said John Garsed and George Schley, and all their confederates, restraining and enjoining them from removing said cotton, or any portion thereof, by themselves, their agents or confederates, and restraining and enjoining them from taking forcible possession of said cotton under pretext of military orders or otherwise, or in any manner interfering with the same, and all under penalties to be limited in said writ; and also a writ of injunction to be directed to said Thomas S. Metcalf, restraining and enjoining him, under fear of such military orders or otherwise, from placing said defendants in possession of said cotton, or doing or receiving anything in pretended or forcible execution of said pretended contract; all under penalties to be likewise limited in said writ.

May it please your honor to grant to your orators the State's most gracious writ of subpœna, to be likewise issued out of and under the seal of this honorable court, and to be directed to said John Garsed, George Schley, and Thomas S. Metcalf, and the rest of their confederates, commanding them on a certain day and under a certain
34 penalty, therein to be limited and specified, personally to be and appear before your honor in this honorable court, and then and there, upon their several oaths, full, true, direct, and perfect answer to make all and singular the matters and things hereinbefore stated and charged, and further to stand to, perform, and abide such order and decree therein as to your honor shall seem meet; and, as in duty bound, your orators will ever pray, &c., &c.

WILLIAM A. BEALL,
JEREMIAH BEALL,
Complainants.

BENJ. H. HILL, *Sol. for Complts.*

GEORGIA, *Richmond County:*

You, William A. Beall, do solemnly swear that you are one of the complainants in the foregoing bill, and that the statements therein, as far as they relate to your own act and deed, are true of your own knowledge, and that as far as they relate to the act and deed of others, you are informed and believe them to be true: so help you God.

WILLIAM A. BEALL.

Sworn to and subscribed before me, Sept. 12th, 1865.

AUGUSTUS D. PICQUET, *J. P.*

GEORGIA, *Baldwin County;*

You, Jeremiah Beall, do solemnly swear that you are one of the
35 complainants in the foregoing bill, and that the statements therein, as far as they relate to your own act and deed, are true of your knowledge, and that as far as they relate to the act and deed of others you are informed and believe them to be true: so help you God.

JEREMIAH BEALL.

Sworn to and subscribed before me, this 16th day of September, 1865.

IVERSON L. HARRIS,
A Judge of the Superior Courts of Ga.

AT CHAMBERS,
Sandersville, Ga., Sept. 15th, 1865.

I have read the bill of Jeremiah Beall and William A. Beall against John Garsed, George Schley, and Thomas S. Metcalf, praying injunc-

tion, just handed to me by the Hon. B. H. Hill, complainant's solicitor, and find myself awkwardly situated, owing to the fact that one of the parties is a near relative of mine. My uniform practice has been not to act officially, if it could be avoided, in any case where a kinsman was interested. In this case there are special reasons, touching this particular relative, why this practice of mine should be adhered to; and I must therefore decline, at least for the present, to act upon this bill, and ask that some other judge in the State will consider and act upon it. This course may subject me to the unjust suspicion of being deterred
36 from duty by the threat of the military. I can say with truth that that threat produces no effect upon me, except a feeling of regret that a military commander, so justly distinguished as General Steedman, should so far forget what is due to the civil authority of his country.

JAS. S. HOOK,
Judge S. C. M. Dist.

IN CHAMBERS,
Milledgeville, Ga., 16th Sept., 1865.

By the 244th section of the code of Georgia, authority being granted to the several judges of the superior courts of this State to exercise the power of granting injunctions in circuits other than their own, where the resident judge is absent or indisposed, or interested, or is laboring under any disqualification or inability to act, and his honor, James S. Hook, judge of the middle circuit, having, by the paper annexed to this bill for an injunction, declined to consider the same, and whether it should receive his sanction, by reason of his near relationship to George Schley, esq., one of the defendants, and the said bill, praying an injunction, having been in consequence thereof presented to me for my judicial sanction, being the nearest judge of the superior courts of Georgia to Judge Hook, I have felt it to be my sworn duly to calmly examine the allegations of said bill, and to determine whether such a case is
37 made thereby as will authorize interposition by an injunction, so as to protect complainants against what may be an irreparable injury to them, whilst litigation may be pending as to whether there was a contract of sale or not in reference to nine thousand seven hundred and seventy-eight bales of cotton, by restraining defendants from removing said cotton, or any part of it, from where it now is, until a final decree upon the whole case, or until the further order of a superior court in the premises.

That examination has been carefully made, and being thoroughly satisfied of my jurisdiction and duty in the premises, and as, moreover, the injunction is only temporary, an interlocutory order, and cannot be final until upon a full hearing before a special jury, I am constrained to grant the prayer for an injunction against the defendants. In the bill it is stated, and the statement is sworn to, that Maj. Gen'l Steedman has threatened to imprison the judge who will dare to grant an injunction in this case. Taking the view of the case which I do, I am not able to perceive how an injunction prayed for against citizens of Georgia, and a citizen of another State, amenable to the process of our courts, they not being connected with the army, can, in the slightest decree, interfere with General Steedman or the Federal Government which he repre-
38 sents; they, having no interest whatever in the cotton or control of it, as far as I can discover. It would, in such a state of facts, be sheer cowardice in me as a judge; it would be far worse, it would be perjury, were I to shrink from the performance of a clear duty; a con-

scientious discharge of sworn duty, by reason of such a menace. I am no volunteer in this matter. I would gladly avoid at all times a collision with military power. I do not court the martyrdom of imprisonment, but with deep conviction of my mind that the point involved, whether there was a contract or no between the parties, is solely one of civil cognizance, and over which the military have no jurisdiction, I can but hope that the distinguished officer who is alleged to have uttered such threats, did so under sudden impulse, and that they solely were the result of his having been irritated by annoying importunities. It is to be presumed that before he imprisons a judge for doing his duty and no more, he will refer the matter to President Johnson. It should ever be the pride of every great captain to follow the example of the illustrious Andrew Jackson, who in New Orleans rendered a prompt and respectful obedience to civil authority, though surrounded by a devoted army. Such examples will do more to perpetuate our free institutions than hundreds of victories won on hard-contested fields.

39 Wherefore, the prayer for injunction is granted, and it is considered and ordered by the court that the writ of injunction do issue in the penalty of one million of dollars, directed to John Garsed and George Schley, restraining and enjoining them, their attorneys at law or in fact, and their confederates, from removing said nine thousand seven hundred and eighty-eight bales of cotton, or any portion thereof, in any manner, and from seizing or taking possession of the same in any manner, or in any manner interfering with the same until the hearing of the cause or the further order of the superior court; also, that a writ of injunction do issue in the like penalty of one million of dollars, directed to Thomas S. Metcalf, of Augusta, Ga., restraining and enjoining him, his attorneys, and agents, and confederates, from placing said John Garsed and George Schley, their attorneys, agents, and confederates, in possession of said cotton, or any part thereof, and from doing or receiving anything touching such alleged contract, as having been made with said Metcalf about said cotton, until the hearing of the cause, or the further order of the superior court in the premises. It is further ordered, that previous to the issue of the aforesaid injunction by the clerk of the superior court for Richmond County, Ga., that the complainants do file with the clerk of said court, or his

40 deputy in his absence or disqualification, or if neither are qualified to act, then with some one of the justices of the inferior court for said county, a good and sufficient bond to indemnify said defendants according to the law of Georgia in force, in the sum of five hundred thousand dollars.

Let the State's writs of subpœna, in the penalty of one thousand dollars each, issue to the several defendants, commanding them to answer the bill of complainants, or make such other defences thereto as are known to courts of equity, and let such other and further proceedings be had as are usual in courts of equity.

IVERSON L. HARRIS,
A Judge of the Superior Courts of Georgia, and for the Ocmulgee Circuit.

Bond executed and approved in conformity with the order of Hon. Iverson L. Harris, judge of the Ocmulgee circuit, this September 18th, 1865, in the sum of five hundred thousand dollars.

W. J. DEAS, *Dept. Clerk.*

(Endorsed:) Richmond superior court, October term, 1865. William A. Beall and Jeremiah Beall vs. John Garsed, George Schley, and Thomas S. Metcalf. Bill for relief and injunction. Filed in office this 18th September, 1865. W. J. Deas, dept. clerk.

41 *Subpœna in equity.*

STATE OF GEORGIA, *Richmon' County:*

In the superior court of Richmond County. In equity.

BETWEEN WILLIAM A. BEALL & JEREMIAH Beall, *and* JOHN GARSED, GEORGE SCHLEY, THOMAS S. Metcalf. } Bill for relief and injunction.

John Garsed, George Schley, and Thomas S. Metcalf, defendants:

You, and each of you, defendants in the above-stated case, to wit, John Garsed, George Schley, and Thomas S. Metcalf, are hereby commanded that you be and appear at the superior court next to be held in and for the county of Richmond, on the second Monday in April, 1866, and there to make full, true, and perfect answers of all matters and things set forth in complainant's bill for relief and injunction, and to do and perform such other things as shall be ordered and decreed by said court.

Therein fail not under pain of one thousand dollars.

Witness the honorable James S. Hook, judge of our said court, this 18' day of September, eighteen hundred and sixty-five.

W. J. DEAS, *Dep. Clerk.*

42 *Injunction.*

STATE OF GEORGIA,
Richmond County:

To John Garsed, George Schley, and Thomas S. Melcalf, and their confederates, servants, and agents:

Whereas William A. Beall and Jeremiah Beall hath preferred their bill for relief and injunction against you, returnable to the April term, eighteen hundred and sixty-six, of the superior court of said county, and pray the issuing of the State's writ of injunction, to be forthwith issued, restraining and enjoining John Garsed and George Schley from removing nine thousand seven hundred and seventy-eight bales of cotton, or any portion thereof, in any manner, and from seizing and taking possession of the same in any manner, or in any manner interfering with the same, and Thomas S. Metcalf from placing said John Garsed and George Schley, their attorneys, agents, and confederates in possession of said cotton, or any part; or from doing or receiving anything touching such alleged contract as having been made with said Metcalf about said cotton, until the hearing of the cause or the further order of the superior court. And the said William A. Beall and Jeremiah Beall, having verified the facts and statements of said bill on oath, and said bill having been read and sanctioned by honorable Iverson Harris, judge of the Ocmulgee circuit of said State, Judge Hook, of the middle district, declining to preside, therefore you, the said John
43 Garsed and George Schley, and all and every other person before mentioned, are hereby commanded and strictly enjoined that you and every of you do from henceforth, altogether and absolutely, desist from removing said nine thousand seven hundred and seven-eight bales of cotton, or any portion thereof, in any manner, and from seizing and aking possession of the same in any manner, or in any manner interfer-

ing with the same. And you, the said Thomas S. Metcalf, and al and every person above mentioned, are hereby commanded and strictly enjoined from placing the said George Schley and John Garsed, their attorneys, agents, or confederates in possession of said cotton, or any part thereof, and from doing or receiving anything touching such alleged contract as having been made with you, the said Metcalf, about said cotton, until the said superior court shall make further order to the contrary.

To the sheriff of the county of Richmond:

You are hereby commanded to give notice hereof to the said John Garsed, George Schley, and Thomas S. Metcalf, and all other persons before mentioned, by having a true and attested copy of the foregoing writ with the said John Garsed, George Schley, and Thomas S. Metcalf, and other persons; each to enter into bonds, payable to said William A. Beall and Jeremiah Beall, with good security, in the sum of one million dollars, to observe and abide by the conditions and re-
44 quirements of the foregoing order. Fail not under pain of one million dollars, and make return of this writ to the superior court to be held in and for said county on the second Monday in April, 1866.

Witness the honorable James S. Hook, judge of said court, this 18th day of Sept., 1865.

W. J. DEAS, *Dept. Clerk.*

Bond of complainants.

STATE OF GEORGIA,
Richmond County:

Know all men by these presents, that we, William A. Beall and Jeremiah Beall, are held and firmly bound as principals, and William J Owens, H. F. Russell, W. J. Sams, B. H. Warren, J. M. Newby, Thos. J. Jennings, and B. S. Dunbar, as securities, unto John Garsed, George Schley, and Thomas S. Metcalf, in the sum of five hundred thousand dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed by our seals and dated this the 18th September, 1865.

The condition of the above obligation is such, that whereas the said William A. Beall and Jeremiah Beall have applied for and obtained an injunction against said John Garsed and George Schley, restraining and enjoining them, their attorneys at law or in fact, and their confederates, from removing nine thousand seven hundred and seventy-eight bales of cotton, described in said application, or any portion thereof, in any
45 manner, and from seizing or taking possession of the same; and also an injunction against said Thomas S. Metcalf, restraining and enjoining him, his attorneys, agents, or confederates, from placing said John Garsed and George Schley, their attorneys, agents, and confederates, in possession of said cotton, or any part thereof, and from doing or receiving anything touching an alleged contract relative said cotton; and whereas, as a condition of said injunction, his honor granting the same has required the said Jeremiah Beall and William A. Beall shall execute this bond to indemnify said defendants, according to the laws of Georgia:

Now if the said William A. Beall and Jeremiah Beall shall faithfully indemnify said defendants, and pay all costs and damages they may recover in consequence of the wrongful suing out of said injunction, or

cause the same to be done and paid, then this bond shall be void; else shall remain in full force and virtue.

WILLIAM A. BEALL.	[SEAL.]
JEREMIAH BEALL.	[SEAL.]
WILLIAM J. OWENS.	[SEAL.]
H. F. RUSSELL.	[SEAL.]
W. J. SAMS.	[SEAL.]
B. H. WARREN.	[SEAL.]
J. NEWBY.	[SEAL.]
THOS. J. JENNINGS.	[SEAL.]
B. S. DUNBAR.	[SEAL.]

Filed and approved Sept. 18th, 1865.

46 GEORGIA,
Richmond County:

CLERK'S OFFICE, *Superior Court.*

I, Lafayette McLaws, clerk of said court, do hereby certify that the foregoing is a true copy of the bond given by William A. Beall, Jeremiah Beall, as principals, and William J. Owens, H. F. Russell, W. J. Sams, B. H. Warren, J. M. Newby, Thos. J. Jennings, and B. S. Dunbar, to John Garsed, George Schley, and Thos. S. Metcalf, the original of which is now in my possession.

Witness my hand and the seal of said court this 13th day of April, 1867..

[SEAL.] LAFAYETTE McLAWS, [SE.]
Clerk Superior Court, R. C.

(Bond endorsed:) William A. Beall, Jeremiah Beall, as principals, and W. J. Owens, H. F. Russell, and others, securities. Bond. Filed in office, September 18th, 1865. W. J. Deas, dep. clerk.

47 *Answer of John Garsed, defendant.*

STATE OF GEORGIA,
Richmond County:

Richmond superior court, April term, 1866.

WILLIAM A. BEALL AND JEREMIAH BEALL,
vs.
JOHN GARSED, GEORGE SCHLEY, AND THOMAS S. Metcalf.

This defendant, saving and reserving to himself all manner of benefit and advantage of exceptions to the many errors, uncertainties, and imperfections in the complainant's said bill contained, for answer thereto, or unto so much and such parts thereof as he is advised and believes is or are necessary to answer unto, answering, saith that this defendant admits it to be true that, previous to June last, the complainants, together with the said Thomas S. Metcalf, did own the lots of cotton situated at Eufaula, Alabama; Dawson, Georgia; at Cuthbert, Georgia; at Fort Gaines, and Albany, amounting to eight thousand six hundred and ninety-four bales, and the lot of eleven hundred bales stored at Americus, Georgia, and that the said cottons were jointly and in copartnership owned by these persons; but that this defendant denies the

48 allegations of the bill that the said cottons are still owned by these persons, inasmuch as they have been bargained and sold by them to this defendant. And, answering the allegation that said cottons are of the value of two millions of dollars, or some other large value, this defendant saith that the value of said cotton to him, or to any one else, situated where it is, would, to-day, be fully one million seven hundred and sixty-four dollars, having greatly appreciated in value since his purchase, and having been purchased by him because of the then upward tendency in prices. And, further answering this allegation, this defendant saith that the value of said cotton may be much greater at the trial of this case, and may amount to the sum specified by the complainants, in which event, of an increase in the value thereof, this defendant shall pray this honorable court to have the full benefit of said value.

And this defendant, further answering said allegation, saith, that for the reasons stated this valuation, it is true, is much greater than the sum which was agreed to be paid by him; but this defendant, at the time he agreed to pay this price for said cotton, could have bought other cotton of similar quality, in the city of Augusta, (though 49 not in such large lots,) at the same price; and though the said cotton be now worth the large sum specified, yet this defendant agreed to pay the full market value of the cotton at the time.

And answering the charges of the complainants, that this defendant, together with George Schley, were seizing the said cotton by and under some pretended military order, this defendant here, once for all, utterly and emphatically denying the allegations on this subject which are set forth in complainants' bill in so rhetorical a manner, answers and saith that the facts, so far as they are known to him, or as they have excited an intelligent belief on his part, are as follows:

In the said month of June last this defendant, being in the county of Richmond, in said State of Georgia, and having gone there from the city of Philadelphia, and State of Pen'sylvania, of which State he is a citizen, which last statement is made in answer to the allegation that this defendant is a non-resident of the State of Georgia, met with Mr. George Schley, when the latter proposed to sell to him the lots of cotton in which he had an interest with Mr. Metcalf, as stated in said bill, Mr. Schley having been authorised, as this defendant has learned and believes, by Mr. Metcalf to sell the same for him at one hundred 50 dollars per bale; and as this defendant has been informed and believes, the said George Schley was authorized to sell the same, so as to make a commission for himself, paying to the said Metcalf one hundred dollars per bale, as aforesaid, in which said contract it was agreed between this defendant and the said George Schley, acting for himself and Mr. Metcalf, that this defendant should have until the sixth day of July next thence ensuing to proceed to Philadelphia, and telegraph an answer w'ether or not he would take said cotton upon the terms proposed.

After this agreement had been made with the said George Schley, the said George Schley, as this defendant is informed and believes, was authorised by the said Metcalf to offer this defendant the lot of cottons specefied first in this answer, and denominated lot No. 3 in the correspondence which ensued, and which is the foundation of this action and as defendant believes and can prove to this honorable court, the said offer was made by the said George Schley as a lawful agent of the said Metcalf, (who was himself the agent of his partners, the complainants,) and was that this defendant might have said cotton at twenty-three cents per pound; that the

said Metcalf had in truth allowed the said George Schley, as this defendant believes, to offer said cotton at twenty cents per pound to this
51 defendant, and to make a commission for himself, and the said George Schley hence offered the same to this defendant at twenty-three cents. And further answering the allegations of said bill, he saith, that he admits the correctness of the memorandum set forth in said bill furnished by the said Metcalf to the said George Schley, and referring to this lot, a copy of which is annexed to said bill, and this defendant, in this connection, saith that after considerable conversation with the said George Schley upon the subject of this memorandum, as this defendant believes, the said Metcalf did not continue to refuse to give time to this defendant to pay for said cotton, as alleged in said bill, but authorised the said George Schley to offer the same (which the said George Schley did) to this defendant upon the terms aforesaid, and giving him until the said sixth day of July, when this defendant was to answer as to the other lots, to reply and say w'ether or not he would take the same. And further answering the allegations of said bill referring to this memorandum and this offer, this defendant saith that he then, to wit, on the twenty-eighth day of June last, received from the said George Schley a note or memorandum in writing, the said George Schley thus acting for the said Metcalf, a copy of which is hereto annexed and
52 marked Exhibit A, by which the said George Schley informed this defendant that he had seen the party controlling this lot of cotton since parting with this defendant, and that said party (meaning the said Metcalf) had agreed that this defendant should telegraph w'ether or not he should take said cotton, and that said party would ratify what he, the said George Schley, had agreed to, and that it would now be necessary for the said George Schley to telegraph this defendant what the said party (Metcalf) might agree to, as had been previously agreed between the said George Schley and this defendant should be done.

And further answering the allegations of the said bill, that the said Metcalf had not offered the said lot No. 3 to "be paid for at a future day," this defendant saith, that after receiving this memorandum of agreement in writing, he felt that he was justifiable in entertaining said proposition, and so proceeded immediately to Philadelphia for the purpose of carrying the same into effect. And further answering the allegations of the said bill, that the said Metcalf had denied that he had made any such trade with this defendant, this defendant saith, that any such denial would be utterly untrue, and so far from its being true, the said Metcalf, as this defendant believes and is ready to prove, has admitted to another and a disinterested gentleman, which
53 admission was made on twenty-second day of July last, and before he was arrested, or even before the case was instituted, that he had sold the said cotton, (meaning the nine thousand seven hundred bale lot,) spoke of the man to whom he had sold said cotton as being on the boat which was then coming up the river, (this defendant at that time being on his way to Augusta, and being supposed to be on a boat then coming up the river,) adding that he would be willing to give him two hundred thousand dollars to let him off the sale, or give him two hundred thousand dollars profit on the sale.

And answering the allegation that the said George Schley had acquired an interest of three cents a pound without the knowledge of the said Metcalf, this defendant saith that he has no personal knowledge of the facts in this connection, but believes that though the said Metcalf may not have known how much the said George Schley was to get, yet

he knew he was to get enough more than the twenty cents from this defendant to make for him a commission for his agency in making said sale.

And answering the allegation that a day or two thereafter, to wit, on the first day of July, the said George Schley communicated to Metcalf what he had reported to said John Garsed, and said Metcalf replied that he, George Schley, had no authority to make any such state-
54 ment, this defendant admits that said Metcalf may have so replied, but before such answer reached this defendant he had acted upon the answer first given said George Schley, and had by telegraph accepted the proposition; that this telegraphic answer was given on the sixth day of July, and was then forwarded to the said George Schley. A copy of the same is hereto attached and marked Exhibit B.

And further answering said allegation, the defendant saith, that the answer thus said to be given by said Metcalf to said George Schley, though immediately telegraphed by the latter, did not reach this defendant until the seventh day of July aforesaid, the money for the payment of the price of the said cotton having been, on the sixth, raised by this defendant, and put in readiness to be immediately forwarded, as will be made plain by other proofs to this honorable court. And in answer to the allegation that this defendant could have incurred no possible risk or labour in this business before this telegram reached him, this defendant answering saith, that he had incurred risk, trouble, liability and expense, to an immence extent, on this account, and on account of the contract made with him as aforesaid by the said George Schley for the said complainants, and had raised more than a million and a half of dollars for the purpose of paying for said cotton,
55 and had placed the same in position to be remitted, thus loosing the interest on the same.

And answering the allegation which finds a place in said bill in this connection, to the effect that the above facts occurred, that is to say, that this last referred to answer of Metcalf was given to said George Schley before there had been any rise in the price of cotton, this defendant saith, that prices may not and probably had not increased before this answer was given to said George Schley in Augusta, but they certainly had increased before the message reached this defendant, and to an extent which would have enabled this defendant to clear five cents a pound on what he had purchased. This defendant therefore felt that it was neither fair, reasonable, or just that the said Metcalf should be allowed to play fast and loose with him in this matter, and he resolved to hold him to his bargain, if possible. He consequently immediately proceeded to Augusta for this purpose, as well as to comply with the other contract which he had made with the said George Schley.

And this defendant also, answering the allegation in said bill that said "Schley promptly communicated such misunderstanding to said Garsed before he had taken any steps, upon the faith of said contract," and denying that there was any misunderstanding such as is insisted
56 on, saith that he had taken the steps of raising the large sum of money aforesaid, and of making other financial and business arrangements, with reference to this purchase, in the large cotton factory with which this defendant is connected, in which are consumed about one hundred bales of cotton per week, which business arrangements involved in part a failure on the part of this business to supply itself with the cotton needed for its consumption from other sources, owing to the contract thus made with the agent of the complainants.

And answering said allegation further, this defendant saith, that for

these reasons he did proceed to Augusta, in the month of July last, as alleged in said bill, and did endeavor to have said contract carried into effect. And in answer to the allegation that this defendant never forwarded one dollar from Philadelphia or elsewhere under such contract, and never came to Augusta or brought one dollar to Augusta to execute such pretended contract, this defendant in this connection saith that he did forward a portion of this money to Augusta, and a considerable portion was here for nearly a month, but the larger portion thereof was not brought here with him when he returned, because of the telegram last received from the said Schley as aforesaid, as
57 this defendant, seeing that the said Metcalf was disposed to dispute, delay, and possibly litigate this matter with defendant, and looking to the purturbed state of society in the South, and the difficulty of travelling with a large amount of money, partly in gold, and the danger thereof, this defendant did not venture to bring and keep with him this large sum of money, but he announced his intention to respond to this payment in the most reasonable way, and as soon as the defendant could be assured by the vendors that it would be accepted, and declarations to this effect were all the time made by this defendant upon his return to Augusta.

And further answering this allegation, this defendant saith, that if he did not have the money in Augusta sufficient to pay for this cotton, it was the fault of the said Metcalf, acting for the said complainants, who insisted upon having this defendant informed that said Schley had misunderstood him, and that he had made no such contract, and it was therefore inexpedient to bring said large sum of money here; but this defendant has been always ready and is now ready, within a reasonable time, to pay said money, & he, defendant, now tenders the same and is ready to pay the same if the said cotton be delivered to him.

And answering the allegation that this defendant came to Augusta in July last and invoked the aid of the military authorities in procuring a remedy, at a time when in truth and in fact there were civil
58 laws and courts in said State to which this defendant could have applied for redress, this defendant saith that he arrived in Augusta on the twenty-fourth day of July last, and on the twenty-sixth he proceeded to seek a remedy for the violation of this contract, finding, as he did, that the said Metcalf persisted in refusing to carry the same into effect; that at the time he was informed, and he believed that this was true, that the civil courts had been suspended by the military authorites of this State; that though perhaps a judge of the Federal courts had been announced as appointed for the district of Georgia, yet that other officers of such courts had not been appointed; that the framework of such courts had not been organised, and business was not yet done in them; that none of the State courts were being held, and it was not until the seventh day of August, or thereabout, that the provisional governor of Georgia issued his proclamation authorising the sessions of the courts.

And further answering the allegations of complainants' bill, this defendant saith, that in the condition of things just set forth he knew not where to go for a remedy save to the military authorities who were administering justice in said State. He therefore went to Gen.
59 Steedman, the major-general commanding in said State, and laid this case before him, and was referred by him to Gen. Grosvenor, the provost-marshal-general, whose official duty it was to hear and determine such cases in the absence of the courts. Before this officer a suit was commenced in his name against the parties, appearance was made to

such suit personally by the said Metcalf and the said William A. Beall, and by counsel witnesses were examined under oath, much evidence was reduced to writing by the court, and a full and fair hearing of the case was had; and after such hearing the decision was made which is contained in complainants' bill, no improper influence having in any manner, shape, or form been exercised or attempted to be exercised upon the officer presiding in said case by this defendant. The said decision was rendered on the second day of August last, and by the same the parties were required to proceed with the completion of the contract in good faith.

And this defendant, further answering this allegation, saith, as very inadequate damages could be awarded him by the court for the injury produced by the breach of the contract on the part of the complainants, looking simply to the price of cotton between the time of purchase and the time of this suit, and this defendant could only have
60 proper redress by a specific performance of the contract, which he would have had the right to ask for, as he is advised and believes, if he could have carried his case into a civil tribunal of said State, this defendant prayed that an order or judgement should be granted him, directing that the said contract as made should be carried into effect, and the said cotton directed to be delivered to him or his agents, which was in effect done by the said orders of the provost-marshal-general.

And further answering this allegation, he saith, that a subsequent order was issued by Gen. Steedman, to wit, on the fifth day September, 1865, which order was also issued, to compel performance of the contract by directing the parties to deliver and give up to him the copies of warehouse receipts, by which the said cotton could be gotten possession of; and thereafter, by his agent, this defendant proceeded to have the said cotton weighed, etc., and this business was proceeding when the injunction prayed for by complainants was brought to the notice of said agents, and the said work was stopped; but in the mean time other facts transpired, to which it is necessary that the defendant should call attention in properly responding to the allegations of said bill. Referring to the said decision and orders of the provost-marshal-general, this defendant calls attention to the fact that time was
61 given to the complainants in which to appeal from said decision to the military superiors of the said provost-marshal-general and the said Gen. Steedman, until the first day of September, 1865.

And this defendant, answering, saith that by verbal orders of Gen. Steedman it was directed that no steps should be taken to disturb or remove said cotton, or weigh the same, until the expiration of said period, and consequently none could be taken to pay the money to the complainants for the same; and these statements are made in answer to the charges in said bill contained, and to answer the allegations that no money was tendered or paid by this defendant during this time. And in answering the allegations in said bill that, by the orders aforesaid, this defendant was permitted to take possession of said cotton and prepare it for shipment, and was allowed until the first day of September to pay the money, this defendant, answering, saith that the order was that the said cotton should be reweighed, and complete bills of said weight made under the directions of said George Schley, (which was directed to be done, in order that it might be accurately ascertained what sum this defendant had to pay for the same,) and the order then directed that if the said complainants and the said Metcalf then refused to receive the money, the cotton might be shipped by this defendant, and

the money value thereof deposited to the credit of the complain-
62 ants and the said Metcalf. This plain reference to the facts, as they appear even in the bill of complaints, completely contradicts the said allegation, and sanctions the denial which this defendant gives of the truth of said allegation. And further answering this allegation, and the charge "that the price of said cotton, under said pretended contract, was due as soon as said decision was made," this defendant, answering, saith that the price of said cotton could not be paid accurately, of course, until the weight of the same was ascertained; and though the order directed that the cotton might be reweighed by the said Schley, yet by verbal orders and directions of Gen. Steedman the said Schley was informed, through this defendant, that no one would be allowed to deal with said cotton until the expiration of the time which was allowed for the complainants to appeal, and therefore the same was not reweighed by the said Schley; but in order to facilitate this and the payment of said money, the said Schley, on the twenty-sixth day of August, 1865, proposed to the said Metcalf, who had just furnished him with the situation of said cotton, the number of bales, and the original weights, and the sum of the price calculated upon said weights, at twenty cents per pound, (a copy of which memorandum is hereunto annexed and marked Exhibit C,) that this defendant,
63 in order that he might not delay the payment, should settle for the cotton at the rate of four hundred and eighty pounds per bale, and when the cotton was reweighed and delivered, if there was any more coming to complainants, it should be settled then; which proposition was declined by said Metcalf, he insisting that the settlement should be made by the original weights. This was declined by the said Schley for this defendant, as such was not the bargain made with this defendant.

And in answer to the allegation that the first day of September arrived and passed, and still not one dollar of said money had been either paid or tendered, this defendant saith that as the first day of September approached, and prior thereto, the said Metcalf instructed the said Schley that he wanted the money in New York, and to be deposited in the Bank of the Republic, certificates of deposite to be taken therefor in sums ranging from ten thousand to one hundred thousand dollars; that this arrangement would be a saving to this defendant, and preferable to him, (Metcalf,) which facts were immediately communicated to this defendant, who, though he had prepared himself to pay the money in Augusta, as fast as the cotton was weighed, after the first of September, immediately placed himself in position to deposit the money as desired by the said Metcalf, thus complying with his wishes, and partly performing the contract between them; but when the said first day
64 of September arrived, the said Metcalf refused to deliver the warehouse receipts by which the said cotton could be controlled, he having been applied to by the said Schley, for this purpose, upon which refusal this defendant brought the matter to the attention of the said Gen. Steedman, who granted the order contained in said bill, and above referred to, directing that copies of the warehouse receipts and orders should be given up to the said Schley in order that the said cotton might be weighed, and that the money be paid to the complainants as fast as each reweighed lot should be delivered to him.

This order directs, as alleged, that the said cotton should be put in shipping order by the said Schley at the expense of said complainants; and this in accordance with the contract, as made by the said Metcalf, according to the usage and custom of merchants in such cases, and in

conformity with law, as this defendant is advised and believes. Copies of the warehouse receipts were furnished after this order, and the agents of the said Schley were proceeding to have said cotton put in order, when notice of the injunction in this case was given.

And answering the allegations which sets forth the order issued on the thirty-first day of August, 1865, reciting that as transportation could not be had for said cotton, that ten days thereafter the said Gar-
65 sed should receive from Thomas S. Metcalf the cotton named in his contract at an estimate of four hundred and fifty pounds per bale, and to pay for therefor by drafts on New York, at thirty days, this defendant saith, that a short time previous to the said first day of September the provost-marshal-general sent for this defendant to know if defendant would be ready to respond at the expiration of the thirty days to the order which had been issued, as he (the general) desired that this should be done. This defendant replied that he was ready to pay, and had all the time been so, as soon as the weight of the cotton, and thus the amount which he had to pay, could be ascertained; but as during the thirty days, by the direction and order of Gen. Steedman, neither party had the right to deal with the cotton, of course the weight could not at once be ascertained and the cotton delivered to him on the said first of September. Reference was also made to the fact that copies of the warehouse receipts and orders, by which the said cotton could be identified and weighed, had not been given up by the said Metcalf to this defendant or his agent; and in view of these facts, and of the then want of transportation for the cotton, as defendant believes, the said General Grosvenor, though this defendant had not asked for such order, believing that it would further the justice of the case, issued the said order.

And further answering said allegation, this defendant saith,
66 that in this same conversation, this defendant looking to a probability of a continuance on the part of the complainants to resist his just claim, and to obtrude obsticles in the way of the performance of their contract, mentioned that he thought it would be better to arrange for the payment of said cotton by drafts on New York, having in his mind the expressed desire of Metcalf to have the money in New York, as he now believes, and looking to the fact that if payment were made in this way, and the complainants did not act in good faith, but failed to carry the contract into effect, this arrangement would allow some time in which to obtain protection against such default and its consequences; the defendant offering at the time to pay, if it was wished, in cash, two, three, four, or five hundred thousand dollars, upon the cotton on account until it was weighed, as this defendant was keeping this money for this purpose, and was loosing the interest on it; and as the defendant believes, this order was issued (without defendant's solicitation) in view of the reasonableness of all the facts above stated. On the next day this order was revoked by General Steedman, and after the matter was brought to his attention, as already stated in this answer, he granted the order of the fifth day of September aforesaid.

And answering so much of said bill as alleges the arrest of
67 the said Metcalf and the said Cohen for bribery, and as alleges that the said Metcalf was thrown into prison, etc., this defendant saith, that if the acts were done as alleged, (and proof of the same and the reasons therefor will be made by said officers at the proper stage of this case, no doubt,) and if the said Steedman did say that the complainants and the said Metcalf were "all rascals," as alleged, all these things, as defendant believes and as he thinks is plainly evident

from the statements of the bill itself, resulted from what was believed to be the attempt to bribe the provost-marshal-general whilst considering this case. This defendant denies that he had anything to do with these things, not being in the city of Augusta or the State of Georgia at the time; and answering the allegations further, he says that if the acts thus complained of were wrong, about which it is unnecessary for him to express an opinion, it is plain that they were provoked by what these officers believe to be a felonious attempt to bribe General Grosvenor.

And answering the allegation that this was a charge of pretended bribery, and that these officers, the said Schley, and this defendant had availed themselves of it in order to persecute the said Metcalf, this defendant saith, that the attempt to bribe the said Grosvenor has been confessed in writing by said Cohen, the associate and agent of the
68 said Metcalf; and in answer to the allegation that this was intended by Metcalf only as an offer to compromise with this defendant, he saith that defendant, as he has already stated, was not in the State at the time, and this he believes was well known to Metcalf; that no sum of money was offered to him for a compromise, nor to the said Schley for him, nothing said to them to this effect, and this defendant submits to this honorable court whether or not it is a usual thing for compromise money in such a case to be offered to the judge before whom a cause is pending, and not to the parties.

And this defendant, further answering these allegations, saith, that however this may be, he had nothing to do with said arrests, and he prays the court and country that if errors were committed by the officers making these arrests, these errors, prompted as they no doubt were by the blunders, not to say the crimes of said Cohen and Metcalf, should not and will not by a just and cons'ientious tribunal be allowed now to stand as a barrier of prejudice between this defendant and the justice of his case.

This defendant denies the allegation that he had taken possession of the officers in conspiricy with the said Schley by his statements, or that he and the said Schley have subjected these gentlemen to a "mesmeric infatuation;" and answering this allegation, sayeth, that in
69 his time he has seen a mesmeric influence exercised by a noted operator upon his patient by subjecting the latter to a continued and fixed gaze upon a bright coin; and this defendant suggests that possibly the imagination with which this charge and accusation originated had been itself somewhat mesmerized by some such steady contemplation as that mentioned, together with a few appropriate "passes."

And answering the allegations of the said bill, to the effect that the said William A. Beall had given no authority to the said Metcalf to make such a contract as that set forth by the said Schley, and that he had no knowledge of the acts of the said Metcalf in the premises, or any suggestions to this effect, in said bill contained, this defendant, denying the same wholly, saith, that somewhere about the first of September aforesaid this defendant met the said William A. Beall, on or about what is known as the Railroad Bank corner, in the city of Augusta, when the said Beall asked this defendant if he would appoint a time to meet him at the said Metcalf's office to try and settle the matter. Defendant stated that he could not fix a time. Beall then said that the claim could have been settled long since had Schley been out of the way; and in the conversation he claimed the payment of twenty-three cents per pound for the cotton, and insisted that this should
70 be paid to the complainants and the said Metcalf; this defendant

replying that he had nothing to do with the price of the cotton as between himself and the complainants, that he had not known them and the said Metcalf in the transaction, but the said Schley as their agent or broker, and settlement should be made with or through him. This defendant denies that the said Metcalf was frightened and cowed, as alleged in said bill, and believes that this is insisted on only as a pretext for making him a party defendant to said bill.

And this defendant, answering this allegation, saith further, that he believes the said Metcalf to be fully consulting and agreed with the said complainants in all that they are doing, as he is identified with them in interest in the matter of this transaction. This defendant denies the charges of deceptive practices and combinations attributed to him in said bill in every point of view, or that he is in conspiricy with any one who, during these proceedings, has been kept in the background, and he denies the whole flourishing ad captandum story of persecution and injustice practiced by him, in combination with others, towards the said complainants on the said Metcalf.

And further answering said bill, in view of all the facts set forth in this answer, and which this defendant expects to submit by proof to this honorable court, this defendant prays that he may have a
71 decree of this honorable court in his favour; and inasmuch as by the nature of the transaction and by reason of the facts thus submitted, or to be submitted, it is evident or will appear that a recovery of the damages by a suit at law, for and on account of the breach of this contract committed by these complainants and the said Metcalf, would not be an adequate compensation for the non-performance of the contract, and forasmuch as, for the reasons stated or to appear, by a specific performance of the contract only can adequate redress be insured to this defendant, and as specific performance of such a contract is allowed by the law and statutes of the State of Georgia, as this defendant is advised and believes, or the code thereof, in such case made and provided, and as it is in the power of the complainants now to perform the said contract, this defendant prays that they may be ordered and directed by the decree of this court so to perform it, and that if anything has occurred, or should occur, before the said decree to prevent such specific performance, the said parties may, according to the law in such case made and provided, be ordered, directed, and adjudged to respond in damages to this defendant to an amount which will compensate him as fully as if specific performance of the contract had been completed or carried into effect, and that the said Metcalf, whose in-
72 terests are identical with those of the complainants, now that this court has jurisdiction of him and of this transaction, may be compelled, in order that full justice shall be done between all the parties, to litigate with this defendant, and that the issues which are existing between them may be fully and fairly and without multiplicity of actions adjudicated between them and between this defendant, the said Metcalf, and the said complainants; that every order necessary to insure such trial and hearing may be had and taken; that if this defendant should move for the same, and injunction against either or all of these joint owners of the said cotton may be granted upon such terms as to this honorable court shall seem meet and just, and that in this proceeding justice between all these parties in interest shall be done.

And this defendant again denies all and all manner of confederation and unlawful confederacy wherewith he is by said bill charged, without this, that there is any other matter or thing, material or necessary for

this defendant to make answer unto, not herein and hereby truly answered, traveresed, confessed, or avoided or denied, is true to the best of the knowledge or belief of this defendant; all which he is ready to maintain, aver, and prove to this honorable court as it shall direct; and humbly prays to be hence dismissed with his reasonable costs
73 and charges in this behalf most wrongfully sustained.

EBEN'R STARNES,
HERSCHEL V. JOHNSON,
Solicitors for Complainant.

GEORGIA, *Richmond County:*

Personally appeared John Garsed, who, being sworn, saith that the facts set forth in the above answer, so far as they relate to his acts and deed, are true, and so far as they relate to the acts and deeds of others he believes them to be true.

JOHN GARSED.

Sworn to before me this October 11th, 1865.

JAMES S. HOOK,
Judge S. C., M. District.

EXHIBIT A.

DEAR GARSED: Since you left town, I saw the party controlling the large lot of cotton No. 3, and it is agreed that if you telegraph to take it they will ratify what I have agreed; so this makes it unnecessary for me to telegraph Monday. Write, and send by Glasgow how I shall telegraph you, to whose care, or how, should it be necessary at any time. I wish you Godspeed in your journey—too dark to see how to write more.

Truly, your friend,

GEORGE SCHLEY.

28th June, 8 o'clock.

74 EXHIBIT B.

[Telegram.]

PHILADELPHIA, *July 6th*, 1865.

GEORGE SCHLEY, *Augusta, Ga.:*

I accept one, two, and three lots in gold, and greenbacks will be sent by next vessel by Adams Express. Send forward the cotton. I will return by steamer on Wednesday next.

JOHN GARSED.

EXHIBIT C.

Americus	1,104 bls.	559,281 lbs.	*a* 20 c.	$111,856 20
Albany, S. & R. W. H.	3,454 bls.	1,731,774 lbs.	" "	346,354 80
Albany, H. I. C. W. H.	2,557 bls.	1,311,495 lbs.	" "	262,299 00
Dawson	1,210 bls.	640,518 lbs.	" "	128,103 60
Eufaula	1,405 bls.	788,954 lbs.	" "	157,790 80
	9,730 bls.	5,032,022 lbs.	" "	$1,006,404 40

August 26th, 1865.

replying that he had nothing to do with the price of the cotton as between himself and the complainants, that he had not known them and the said Metcalf in the transaction, but the said Schley as their agent or broker, and settlement should be made with or through him. This defendant denies that the said Metcalf was frightened and cowed, as alleged in said bill, and believes that this is inisted on only as a pretext for making him a party defendant to said bill.

And this defendant, answering this allegation, saith further, that he believes the said Metcalf to be fully consulting and agreed with the said complainants in all that they are doing, as he is identified with them in interest in the matter of this transaction. This defendant denies the charges of deceptive practices and combinations attributed to him in said bill in every point of view, or that he is in conspiricy with any one who, during these proceedings, has been kept in the background, and he denies the whole flourishing ad captandum story of persecution and injustice practiced by him, in combination with others, towards the said complainants on the said Metcalf.

And further answering said bill, in view of all the facts set forth in this answer, and which this defendant expects to submit by proof to this honorable court, this defendant prays that he may have a
71 decree of this honorable court in his favour; and inasmuch as by the nature of the transaction and by reason of the facts thus submitted, or to be submitted, it is evident or will appear that a recovery of the damages by a suit at law, for and on account of the breach of this contract committed by these complainants and the said Metcalf, would not be an adiquate compensation for the non-performance of the contract, and forasmuch as, for the reasons stated or to appear, by a specific performance of the contract only can adequate redress be insured to this defendant, and as specific performance of such a contract is allowed by the law and statutes of the State of Georgia, as this defendant is advised and believes, or the code thereof, in such case made and provided, and as it is in the power of the complainants now to perform the said contract, this defendant prays that they may be ordered and directed by the decree of this court so to perform it, and that if anything has occurred, or should occur, before the said decree to prevent such specific performance, the said parties may, according to the law in such case made and provided, be ordered, directed, and adjudged to respond in damages to this defendant to an amount which will compensate him as fully as if specific performance of the contract had been completed or carried into effect, and that the said Metcalf, whose in-
72 terests are identical with those of the complainants, now that this court has jurisdiction of him and of this transaction, may be compelled, in order that full justice shall be done between all the parties, to litigate with this defendant, and that the issues which are existing between them may be fully and fairly and without multiplicity of actions adjudicated between them and between this defendant, the said Metcalf, and the said complainants; that every order necessary to insure such trial and hearing may be had and taken; that if this defendant should move for the same, and injunction against either or all of these joint owners of the said cotton may be granted upon such terms as to this honorable court shall seem meet and just, and that in this proceeding justice between all these parties in interest shall be done.

And this defendant again denies all and all manner of confederation and unlawful confederacy wherewith he is by said bill charged, without this, that there is any other matter or thing, material or necessary for

this defendant to make answer unto, not herein and hereby truly answered, traveresed, confessed, or avoided or denied, is true to the best of the knowledge or belief of this defendant; all which he is ready to maintain, aver, and prove to this honorable court as it shall direct; and humbly prays to be hence dismissed with his reasonable costs
73 and charges in this behalf most wrongfully sustained.

EBEN'R STARNES,
HERSCHEL V. JOHNSON,
Solicitors for Complainant.

GEORGIA, *Richmond County:*

Personally appeared John Garsed, who, being sworn, saith that the facts set forth in the above answer, so far as they relate to his acts and deed, are true, and so far as they relate to the acts and deeds of others he believes them to be true.

JOHN GARSED.

Sworn to before me this October 11th, 1865.

JAMES S. HOOK,
Judge S. C., M. District.

EXHIBIT A.

DEAR GARSED: Since you left town, I saw the party controlling the large lot of cotton No. 3, and it is agreed that if you telegraph to take it they will ratify what I have agreed; so this makes it unnecessary for me to telegraph Monday. Write, and send by Glasgow how I shall telegraph you, to whose care, or how, should it be necessary at any time. I wish you Godspeed in your journey—too dark to see how to write more.

Truly, your friend,

GEORGE SCHLEY.

28th June, 8 o'clock.

74 EXHIBIT B.

[Telegram.]

PHILADELPHIA, *July 6th*, 1865.

GEORGE SCHLEY, *Augusta, Ga.:*

I accept one, two, and three lots in gold, and greenbacks will be sent by next vessel by Adams Express. Send forward the cotton. I will return by steamer on Wednesday next.

JOHN GARSED.

EXHIBIT C.

Americus	1,104 bls.	559,281 lbs.	*a* 20 c.	$111,856 20
Albany, S. & R. W. H.	3,454 bls.	1,731,774 lbs.	" "	346,354 80
Albany, H. I. C. W. H.	2,557 bls.	1,311,495 lbs.	" "	262,299 00
Dawson	1,210 bls.	640,518 lbs.	" "	128,103 60
Eufaula	1,405 bls.	788,954 lbs.	" "	157,790 80
	9,730 bls.	5,032,022 lbs.	" "	$1,006,404 40

August 26th, 1865.

75 *The seperate answer of George Schley.*

Richmond superior court.

STATE OF GEORGIA, *Richmond County:*

WILLIAM A. BEALL AND JEREMIAH BEALL
vs.
JOHN GARSED, GEORGE SCHLEY, AND THOMAS S. Metcalf.

This defendant, in answer to the foregoing bill of complaint, answering, saith that this defendant, having filed his release in favour of the parties to this bill, relinquishing all right, title, and interest in and to the nine thousand seven hundred and ninety-four (9,794) bales of cotton, the subject-matter of this bill, a copy of which is hereto attached, marked "Exhibit A," has in reality only the position of witness in said case.

This defendant, further answering, saith that it is true, as set forth in complainant's bill, that about the 6th of February, 1865, General D. H. Hill, then in command at Augusta, ordered all the cotton removed from the city to the common, to be in readiness to be burned in the event of the United States Army should reach Augusta, and that several thousand bales of Mr. Thomas S. Metcalf's cotton
76 was taken out and thrown on South Boundary street *an* De Laigle's field, where it was being stolen in large quantities, and from the heavy and incessant raines greatly injured by being sobbed with water, and portions being burned by sparks from the railroad-engines constantly passing and repassing; and from these causes so valueless was it considered, that it could have been purchased for five dollars per bale in gold; and, as this defendant was advised and beleives, that Thomas S. Metcalf did sell, to be taken from Warren Block, one thousand bales of cotton, at two hundred and fifty dollars per bale in confederate money, the specie-value of which was from fifty to fifty-five for one, making the sale at a specie-value for the cotton not exceeding five dollars per bale, where it was under cover and free from damage. Under such a state of things, with but limited means at command to haul cotton, from the fact that the confederate government had seized so many horses and mules, and the field and the road where the cotton lay was so soft, that it was very difficult to haul it out without bogging down, at the solicitation of Mr. Thomas S. Metcalf, this defendant entered into an agreement with him, a copy of which is attached, marked
77 "B," to save his cotton; and from that day this defendant abandoned all his plantation-work, especially valuable at that season of the year, in connection with the coming crop, and worked with all his force of hands and teams, and all he could hire, placed guards over the cotton, who watched day and night, driving off thieves and marauders, who frequently came in large numbers to steal and carry it off, as they had been doing to a very large amount whilst it was laying unguarded on the common; had the track of the railroad cleaned of fire-coals after each engine had passed to prevent fire from getting into the cotton, as it lay where it was thrown, close to the rails; and thus by constant watching, care, and labour, this defendant succeeded in saving the nett number of sixteen hundred and fourteen (1,614) bales of cotton, as Mr. Metcalf's portion under aforesaid agreement; and the same was safely stored in the gin-house and barnes on the farm of the defendant, near the city; and this defendant is advised and believes,

that John A. Moore saved, under a similar agreement, nine hundred and fifty-four (954) bales of cotton nett to Mr. Metcalf's share, which was stored in two barnes or sheds, one in Mr. Charles De Laigle's field, and the other on the plantation of Mr. John Phinizy, thus saving
78 from these sources twenty-five hundred and sixty-eight (2,568) bales of cotton to Mr. Metcalf as his portion from the mass of cotton thrown out from the railroad-cars and scattered over the commons and fields, at the mercy of thieves and incendiaries, and the constant risk of distruction by fire, all of which, but for the timely aid afforded under the said agreement, would have been passibly a total loss by the joint dangers of rain, fire, and robbery. And this defendant, further answering, saith that, by reference to said agreement, marked "Exhibit B," it will be seen that defendant's interest in the cotton was such, that he was to deliver to Mr. Metcalf two-thirds of the number of bales of cotton thus hauled and saved, taking one-third to himself. This defendant, further answering, saith that it is not true, as set forth by the complainants, that "in the month of June this defendant proposed for himself and Metcalf to sell said cotton;" but, on the contrary, said Thomas S. Metcalf, on or about the 26th of June, when this defendant was walking from Broad street to his office, stopped this defendant and said, "Look here, we had better sell as quick as we can all the cotton that you and Moore saved for us." This defendant asked why, and said he was opposed to it, beleiving cotton would advance very soon. "Well," said Mr. Metcalf, "I'll tell you why. I have sent four different parties
79 to Washington to get my pardon. I have heard from three of them, and they say there is no chance; and I fear the fourth will meet with no better success," or words to this effect, and the sooner we sell and get it into money the better. Like you, I believe cotton will go high, and would not sell it if I could help it." This defendant said to him in reply, if this is true, this defendant concurred with him, as this defendant claimed through him; it all once having been his (Metcalf's) cotton.

That this defendant was, therefore, willing to sell, and asked him (Metcalf) to sell all together, defendant's with his own.

Mr. Metcalf then asked defendant if defendant knew of any one to whom he (defendant) could sell it. This defendant replied that he did not, but that there was a large manufacturer, Mr. John Garsed, whom defendant had known before the war as a man of means, who had just arrived, and was at defendant's office that morning, but could not say what his errand was, but would sound him upon the subject, which Mr. Metcalf desired this defendant to do.

On defendant's return to defendant's office, defendant found Mr. Garsed, and in conversation with him defendant brought up the subject of cotton, and asked as to the amount he had on hand, and finding it not very large, this defendant asked him if he would not like to pur-
80 chase two or three thousand bales at a price that would suit him. He said he would have no objection.

This defendant then asked him to go to this defendant's farm in the morning, and look at a lot of cotton at this defendant's gin-house, and at a lot at De Laigle's field, and he promised he would do so.

On the next morning this defendant got his brother, at whose house Mr. Garsed was staying, to drive Mr. Garsed down and look at the cotton.

Mr. Metcalf, soon after this defendant got to town, asked this defendant if he had gone down with Garsed. This defendant replied, "No; my brother went with him."

Mr. Metcalf appeared very anxious that this defendant should have gone with Mr. Garsed, as he thought this defendant could have shown it better, etc., and seemed dissatisfied that this defendant had not gone.

This defendant, on returning to his office, found Mr. Garsed there, and on enquiry he seemed pleased with the quality of the cotton, and said he would like to buy it if the terms suited him; but he had brought no money, as from all that was said of the unsettled state of the country, the danger was too great to travel with large sums of money, and this was the reason why he had brought none with him, thinking he could use drafts, if needed. This defendant reported this conver-
81 sation to Mr. Metcalf, who said he would not sell unless the money was here.

This defendant then asked Mr. Metcalf what price he had put on the cotton. He said, "If a purchaser was here to-day with the money, and would take the cotton where it is and as it is, he would sell it for one hundred dollars per bale, in greenbacks."

This defendant then said to Mr. Metcalf, as Mr. Garsed has not the money here it is useless to see him further; and the subject dropped between us. On my return to the street Mr. Metcalf again accosted me about the cotton.

This defendant said to him that Mr. Garsed was able, from what he said, to raise any amount of money he wanted, at any moment, in Philadelphia, and that this defendant was not afraid to trust him for this defendant's portion of the cotton, if a good sale could be made to him. Mr. Garsed, during the day, asked this defendant what was the lowest price at which the cotton could be purchased. This defendant asked him how much per bale he would give for it, where it is and as it is. He replied, he "would buy it by the pound and pay for only what he got."

Finding Mr. Metcalf's proposed mode of selling would not suit him, this defendant told him he would ascertain further about it. The next morning, before Mr. Garsed came in, I had another conversation with Mr. Metcalf, who still insisted, "if the money was here, or in a
82 short time, a trade could be made; but, after a while, said, "As you know Mr. Garsed and I don't, I am willing to sell you the cotton on the terms I proposed by the bale; you can sell to him and make your commission out of him." On the arrival of Mr. Garsed at my office this defendant told him, if this defendant could sell him the cotton he (this defendant) would take (18) cents per pound in specie for my (this defendant's) part, say six hundred bales, and twenty-five cents (25) *cents* per pound in greenbacks for two thousand and eighty (2,080) bales. Mr. Garsed said if this defendant would write down the proposition, and give him time to get to Philadelphia, say on the 6th of July, to telegraph if he would take it, he thought he would trade, and, if a trade, would come right back with the money as fast as the express would take it for him. This defendant asked Mr. Metcalf if he would allow him to give the time to answer by the 6th of July; that, if he would, this defendant felt certain it would be a trade; that I (this defendant) knew of no one likely to be here sooner than that with such an amount of money, etc. Mr. Metcalf consented to it, and this defendant agreed with Mr. Garsed to sell him the two lots designated in my (this defendant's) memorandum as number one and number two; and afterwards the said John Garsed did telegraph, under the date of the 6th of July, agreeing to take the lots at the prices stated, as per Exhibit C,
83 which this defendant immediately showed Mr. Metcalf. This defendant then notified Mr. Metcalf that, as soon as the money could

be got here by express, I (this defendant) would settle his bill at the prices agreed on between him and myself; and on the 18th of July the following bill was presented by this defendant to Mr. Metcalf, which he approved, and received the payment as herein stated, as follows:

George Schley to Thomas S. Metcalf, *Dr.*

1865.

July 18th.	To 1,614 bales upland cotton, in George Schley's possession	$161,400 00
July 18.	To 954 " " " in two sheds of John Moore's, in De Laigle's and Phinizy's barnes	95,400 00
		$256,800 00

The above cottons at the risk of said George Schley from this date; and he takes the said cotton as it is, with all its faults, and where it is, at the above price of one hundred dollars per bale, the said cotton not to be moved until it is paid for; the same being the cotton carried out to DeLaigle's field and the commons, and the wagons of George Schley from Warren Block, by order of General D. H. Hill.

1865. July 18th. Received of George Schley, on the within, twenty-four thousand five hundred dollars.

THOMAS S. METCALF.

July 25. Received of George Schley, on the within, seventy
84 thousand and sixty-one dollars and eighteen cents.

THOMAS S. METCALF.

July 25th. Received of George Schley, on the within, two drafts drawn by John Garsed in favour of and endorsed by George Schley, one for seventy-eight thousand one hundred and forty-two dollars and thirty-eight cents, at sight; the second draft drawn and endorsed as above, at one day's sight, for eighty-eight thousand two hundred and fifty-six dollars and twenty-five cents, both drawn on R. Patterson & Co., Philadelphia, to be paid in New York, and when paid is in full for all my claims to upland cotton, carried to and from De Laigle's field and the commons, not binding myself to the aforesaid number of bales, whether the same be more or less than the within bill calls for.

T. S. METCALF.

Thus paying two hundred and sixty thousand nine hundred and fifty-four dollars and sixty-three cents, ($260,954.63,) four thousand one hundred and fifty-nine dollars and sixty-three cents being claimed by Mr. Metcalf as exchange and interest on the two drafts on R. Patterson & Co., which said drafts were paid on presentation, as this defendant is advised and believes; and thus ended the transaction with Mr. Metcalf in relation to the two first lots, number one and two. By the
85 terms of the aforesaid contract Mr. Metcalf had no interest in, or concern as to, what this defendant might or should get for the said cotton, as this defendant had to take the chance of getting loss by the damage which it received from the long exposure before it was first hauled, and what it might fall short on reweighing it, and the loss by theft, after it was stored, which loss by theft and probable mistake in counting it in the sheds amounted alone to sixty-four bales, and by reweighing to one hundred and thirty bales, making in all one hundred and ninety-four bales, as the following memorandum will show:

Twenty-five hundred and sixty-four bales cotton, estimated at five hundred pounds per bale, (2,564 bales,) @ 500 lbs.	1,282,000 lbs.
These bales, on reweighing, only weighing 476 lbs. average	1,270,464 "
Making the loss in weight on the 2,564 bales of Mr. Metcalf's cotton of	61,536 lbs.
Mr. Metcalf was paid for 954 bales of cotton, to be delivered from two sheds, saved by Mr. Moore. This defendant only received 890 bales, being 64 bales short, from stealage and probable miscount, as above stated, which, at the average of 476 lbs. to the bale, would be equal to	30,464, "
Or,	92,000 lbs.

And no one knows better than Mr. Metcalf how dishonorable it is even to hint that I was not entitled to charge a higher price than
86 he sold to me, when he was subject to no such risks and losses.

This defendant regrets having been compelled to devote so much of his answer to a matter that has no bearing upon, interest or connection with, the real question made by the bill, and this defendant can only account for its introduction by the complainants on the principle pursued by the cuttle-fish, which, when in danger, discharges its noxious secretions to elude and blind its pursuer by blackening the water around its real position.

This defendant, further answering, saith that immediately after the consent of the said Thomas S. Metcalf to give the said John Garsed until the 6th of July to answer if he would take the cotton as aforesaid, and with the full knowledge that Mr. Garsed had no money here, and would not bind himself to a trade until he could get to Philadelphia to consult with his friends, and raise the money if he concluded to purchase, the said Thomas S. Metcalf said he had a big lot of about nine thousand seven hundred and ninety-four (9,794) bales of cotton, in which W. A. Beall and Jeremiah Beall had an interest with him, which he was also very anxious to sell, and handed me the paper marked "Exhibit D," which is hereto attached. The top portion was torn off by
87 this defendant, which contained the lists of the cottons and where stored, as set forth in complainant's bill, which list was sent by this defendant to examine the cotton by and has not since been found; but the latter part is truly set forth, to wit: "Believed to be in very good order as a whole, and to average five hundred (500) pounds to the bale. They belong to and were bought by a large planter in Southwestern Georgia, and can this day be bought for twenty (20) cents a pound, greenbacks. They are mostly crop-lots entire, and therefore are desirable for spinners, as cottons in that section are long staple. There is very little doubt but that they can be had at that price a short time hence, if a buyer should com' out with the cash and go down and see him and the cotton." Mr. Metcalf, in handling this proposition, asked this defendant to see Mr. Garsed and try to sell him the lot, remarking at the same time, "You can make a commission out of Garsed, as you will have the trouble and responsibility of the matter, and, as I don't know Garsed, I will hold you personally responsible to me, as in the other lot."

This defendant took the paper aforesaid, and, in conversation with

Mr. Garsed, made known to him that said lot of cotton, if this defendant could get authority from the parties to sell it to him, he could
88 have at twenty-three cents (23) per pound where it lay, and this defendant would have it reweighed to him, knowing from my bargain with him, in the first lots, the day before, that he would not pay for any but what he got. Mr. Garsid expressed a desire that this big lot should be incorporated with the other two lots, and that I should give him until the 6th of July to answer if he would take the lot; this this defendant told him he had not authority do do, but would see the parties again. Soon after this, defendant went out into the street and saw Mr. Metcalf, and detailed to him what had passed between Mr. Garsed and this defendant, and he refused, saying "If the money was here to day, or in a few days, a trade could be made." This defendant then said to him, as this could not be done, it was useless to make any further effort; but that if he really wanted to sell to Mr. Garsed, I thought he would buy, if he (Metcalf) would give him time to the 6th of July to answer by telegraph. This defendant then parted with him.

This defendant, further answering, saith that a few hours only had elapsed when Mr. Metcalf again stopped him, and commenced talking on the subject of a sale to Mr. Garsed, and said he would have to see W. A. Beall. This defendant remarked to him: Mr. Beall you see every day, and can see him at any time, and had better
89 do so, but that I (this defendant) had no doubt that he (Metcalf) had all authority needful for the sale; and then Mr. Metcalf repeated what had before been said: "That if the money was here, it would be a trade," etc. This, this defendant thinks, was on the 27th of June, and this defendant did not see Mr. Metcalf on the subject until next morning, when he (Mr. Metcalf) again broached the subject, saying pretty much the same thing over again.

This defendant then said to Mr. Metcalf it was useless to say anything further on the subject, as he (Mr. Metcalf) knew that Mr. Garsed had not the money here, and could not, as he said, make so large a trade without having time to consult with his friends after he got home; that if he really wanted to sell, no one else could get so large an amount of money out here sooner, if he (Garsed) concluded to buy. This defendant again left Mr. Metcalf. About midday Mr. Metcalf again accosted this defendant on the subject, seeming very anxious to sell, yet insisting "if the money was here, or in a short time." This defendant then reasoned the matter with him, (Metcalf,) thus: "Mr. Metcalf, would you agree to go North and raise over a million of dollars at, perhaps, considerable cost; pay the express-charges out to Augusta, and when you get the money here perhaps the owners might refuse to sell? Could you ask any business man to do so silly an act? Now, if
90 you really want to sell, give Mr. Garsed until the 6th of July to answer by telegraph if he will take the cotton, and I (this defendant) think it will be a trade. It is impossible to sell such a lot and get the money sooner than this arrangement would bring it." This seemed to have some effect on Mr. Metcalf, and as he (this defendant) left him,he (Mr. Metcalf) asked when this defendant was going out home. This defendant replied he would go about sundown. Mr. Metcalf then asked if Mr. Garsed had gone out. This defendant replied that he was going out with this defendant's brother to dinner, and would leave in the morning for Philadelphia. He then said he would see me again, when this defendant left him and went to his (defendant's) office. Mr. Garsed was preparing to leave for the country, seven miles distant, and next morning for Philadelphia. I reduced to writing and

gave him the paper hereto attached, marked "Exhibit DD." The two first lots this defendant had authority to give to the 6th July, and this defendant added number three, as after my last conversation with Mr. Metcalf, as above stated, this defendant believed that, by the 3rd of July, he (Mr. Metcalf) would authorise this defendant to give him (Mr. Garsed) to the 6th to answer, as he seemed more anxious about selling
91 at my last interview than at any time previously, and as Mr. Garsed could not get home until the 5th, I felt there was time enough to telegraph by the 3rd, and that he could get it by telegraph by the 6th July. Soon after this defendant signed and handed Mr. Garsed the paper aforesaid, and he left for the country, as above stated. Late in the evening of that day (28th) Mr. Metcalf approached this defendant and again opened the subject, and just before this defendant was ready to leave the city; and, after much talk, still saying "if the money was here," etc., this defendant again reminded him of the folly of such a proposition; to raise money and bring it out here, at a heavy expense, and it being uncertain if a trade could be made, etc.; and when this defendant pressed this view, and was about leaving him, I (this defendant) said to him, Mr. Metcalf, Mr. Garsed will leave at six o'clock in the morning in the cars, and if he really wanted to sell the cotton, just say he could have to the 6th, and this defendant had not a doubt it would be a sale, and all right. Mr. Metcalf then said, "Well, well; then give him to the 6th, same as the other lot." This defendant said very well, and left him; went to this defendant's office, for it was getting towards sunset; got into his (this defendant's) buggy, and went out home. As soon as this defendant got home, this defendant ordered his man Glasgow to get a horse ready; and at 8
92 o'clock, soon after this defendant had got home, wrote to Mr. Garsed, in pencil, the note marked "Exhibit E." This note was written immediately on this defendant's arrival at this defendant's residence, four (4) *four* miles from Augusta, and whilst the matter was fresh in this defendant's memory, after much talk about the trade with Mr. Metcalf for two days previous; and thus ended what this defendant beleived was an offer to Mr. Garsed (reduced to writing by this defendant) by Mr. Metcalf, after full conference with Mr. William A. Beall, of the aforesaid lot of cotton, where it lay, and that Mr. Garsed had until the 6th of July to answer by telegraph whether he would take the cotton or not.

The first time this defendant saw Mr. Metcalf after Mr. Garsed left, which this defendant thinks was the 1st July, this defendant told him what he (this defendant) had done, in writing the note to Mr. Garsed that evening, giving him to the 6th to answer. He (Mr. Metcalf) said, "You misunderstood me; I said if the money was here that day, or in a few days, it would be a trade," etc. This defendant said, "Great God, Mr. Metcalf, how could I misunderstand you, after the many talks we have had on the subject, in which you reiterated this remark until I told you it was unnecessary to talk more on the subject. In your last talk with me, just before I left town, if you did not give me the authority to give Mr. Garsed until the sixth (6th) July to answer by telegraph,
93 I am incapable of understanding the meaning of the English language. You did so authorize me, and I so wrote Mr. Garsed. But, Mr. Metcalf, if you say that I am mistaken, I will immediately telegraph Mr. Garsed that I misunderstood you, and he may get it before it is too late;" and this defendant did telegraph at once, as per Exhibit F, and he did so, not because he beleived there had been a mistake, for he is certain, and so expressly states, that he was not

mistaken, but because he was willing that, if Mr. Metcalf beleived there had been a mistake, such mistake might be corrected, if it could be done in time to prevent any injury to Mr. Garsed.

After the departure of Mr. Garsed, and on the 1st July, this defendant was informed by Metcalf that "he had heard from the fourth man he sent to obtain his pardon, that he had succeeded in securing his pardon;" and in the joy of his heart, to make the most charitable conclusion, defendant supposes he had forgotten his agreement to give Mr. Garsed until the 6th of July to decide if he would take the big lot of cotton. Had Mr. Metcalf received this news a few days sooner, he, as well as myself, would have saved many thousands of dollars; as, but for the difficulty of his pardon, I never would have consented to sell the cotton, nor does this defendant beleive Mr. Metcalf would.

This defendant, further answering, saith that this defendant was advised and beleives that the aforesaid telegram of the 1st of July, in consequence of the occupancy of the telegraph line by Govern-
94 ment, did not reach the said Garsed until the 7th of July; and, in the mean time, the following telegram, dated the 6th July, was received by me on the 7th July, to wit: "I accept one, two, and three, in gold, and greenbacks will be sent by next steamer, by Adams Express; send forward cotton; will return by steamer Wednesday next.

"JOHN GARSED."

Immediately on its receipt, this defendant feared that the telegram of the 1st had not reached Mr. Garsed; and, as this defendant wasa fter wards informed and beleives, it did not reach him until the 7th, after he had raised all the money for the three lots, including the nine thousand seven hundred and ninety-four (9,794) bales. This defendant went at once and showed Mr. Metcalf the telegram, and he refused to ratify it as to the big lot of 9,794 bales. On the 8th July, Mr. Metcalf came to this defendant's office and urged this defendant to telegraph Mr. Garsed as follows, using his own words, to wit: "Parties owning the nine-thousand-bale lot refuse to sell, unless funds were here—if here to-day bargain could be closed, and probably can be on your arrival," which this defendant did. This defendant was advised and beleives that Mr. Garsed was prevented from bringing out the money for the big lot after he received this defendant's telegram of the 1st July, which was received on the 7th July, though the whole amount of money, as this defendant was advised and beleives, was raised by him and ready to come forward as fast as the express would bring it.

95 Thus matters rested until Mr. Garsed reached Augusta. Mr. Metcalf was informed by me of Mr. Garsed's intention of applying to the military authorities to enforce the contract, and I did all I could with both parties to keep the case from the military court, and felt much regret that any contest should grow out of the matter, as I was the medium through which it occurred; but all efforts at pacification by this defendant were unheeded, and, without this defendant's knowledge or agency, this defendant received a summons to appear before General Grosvenor as a witness, and before whom I was sworn and examined, and the next day again summoned before him, at the instance of Mr. Metcalf, when this defendant was subjected to a searching examination by Judge W. T. Gould, the counsel for Mr. Metcalf, the only parties present being General Grosvenor, Judge Gould, Mr. Metcalf, Mr. W. A. Beall, and this defendant. Mr. Metcalf had just parted with Mr. Cohen, who had been in conversation with him near the door that we entered to go up to General Grosvenor's office; and as this defendant came near

them they parted hurriedly, Mr. Cohen into his buggy and Mr. Metcalf up stairs, ahead of me, into General Grosvenor's office, where I was examined, as stated above; and as soon as my examination was over this defendant left. The next morning the order of the second of August, as set forth in said bill, was served on me through General Grosvenor's messenger.

96 As responsive to that part of complainant's bill which charges "that said Garsed and Schley had succeeded in hopelessly impressing said Grosvenor with their views, etc., finally agreed to pay the sum of two hundred thousand dollars as a compromise and settlement of the pretended claims aforesaid," this defendant utterly and wholly denies that this defendant ever sought to impress General Grosvenor with any views or influence not founded upon the evidence detailed before him under oath, nor does this defendant know nor did this defendant ever hear of any proposition for a compromise that was sought to be made through Mr. Cohen; nor does this defendant beleive such was ever offered or sought to be offered to Mr. Garsed, for at the date of the arrest of said Cohen and Metcalf Mr. Garsed was on his way to Philadelphia.

And, further answering said allegation, this defendant states that he was informed and beleives that said Cohen presented to General Grosvenor a note for two hundred thousand dollars, made by Thos. S. Metcalf and endorsed by William A. Beall, one of the complainants, and also the sum of eleven thousand dollars in gold and greenbacks; and when asked by General Grosvenor if the same was for a compromise with Mr. Garsed, he (Mr. Cohen) replied, "No, it is for a decision of the case in favour of Metcalf and the Bealls."

The next thing this defendant heard, after the receipt of the order aforesaid, was that Mr. Cohen and Mr. Metcalf had been arrested

97 and thrown into jail for attempting to bribe General Grosvenor to give a decision in favour of Mr. Metcalf and the Bealls. This defendant felt much for Mr. Metcalf, and went, as soon as this defendant heard of the arrest, to the office of Mr. Metcalf, and tendered, through Mr. I. Danforth, his confidential clerk, any assistance this defendant could render him. After this, defendant heard that Joshua Hill, esqr., was employed by Mr. Metcalf as counsel, and Mr. Hill called at this defendant's office. This defendant renewed, through him, the tender of this defendant's servises, and he (Mr. Hill) and this defendant consulted as to the best course to pursue under the circumstances of the delicate situation in which Mr. Metcalf was placed; and, after full conference, we concurred, and both did what we could to releive Mr. Metcalf; and in response to that part of the bill which alleges that the paper set forth in the bill and signed by Mr. Metcalf was extorted by fear of imprisonment and an early death, this defendant states that the paper set forth in complainant's bill, signed by Mr. Metcalf, was drawn by Mr. Hill; and this defendant believes Mr. Metcalf signed said paper, as presented by his chosen counsel, freely and voluntarily; and what service this defendant rendered was prompted alone by the desere to get Mr. Metcalf relieved from confinement and the penalty of his acts; and this defendant did it without fee or reward; nor

98 has this defendant since that time ever asked or demanded, directly or indirectly, any reward from Mr. Metcalf for any services.

And this defendant believes that Mr. Metcalf, if left to his own convictions, without the influence of William A. Beall, at this stage of the proceedings would not have repudiated the contract; for after Mr. Metcalf had been permitted, by the clemency of General Steedman, to

go to his residence on parole, this defendant, on the day before Mr. Metcalf was discharged, was crossing the street from Masonic Hall, opposite the house of Mr. Metcalf, and, as this defendant got to the pavement of the street, near Mr. Metcalf's dwelling, some persons who were conversing with him left, and as I got opposite he beckoned me to come to him, which I did. He took my hand and drew me into his passage and his door, closed the door, and seemed glad to see me; expressed himself thankful for the servise I had rendered him, and went into an explanation of the arrangements with Mr. Cohen, and in that conversation said he was opposed to giving the note of two hundred thousand dollars made by him and endorsed by William A. Beall, one of the complainants, but that Mr. Beall insisted and urged it, and he finally consented; and he then stated he would carry out the decision of General Grosvenor in good faith, and would not appeal, etc.; and in confirmation of his intention, as above expressed, a few days before the thirty (30) days expired, in which Mr. Metcalf and the Bealls had to procure a revocation of the order, Mr. Metcalf came to this defendant, near his office, and handed this defendant the paper, of which the
99 following is a true copy, to wit:

Americus	1,104 bls.	559,281 lbs.	@ 20c	$111,856 20
Albany, S. & R. W. H....	3,454 bls.	1,731,774 lbs.		346,354 80
Albany, H. I. C. W. H. ..	2,557 bls.	1,311,495 lbs.		262,299 00
Dawson	1,210 bls.	640,518 lbs.		128,103 60
Eufaula	1,405 bls.	788,954 lbs.		157,790 80
	9,730 "	5,032,022 lbs. "		$1,006,404 40

AUGUST 26TH, 1865.

Before this Mr. Metcalf had said to me that, when the cotton was to be paid for, he preferred to have certificates of deposite of the Bank of the Republic of the city of New York, in sums of from ten thousand to one hundred thousand dollars each, which I agreed should be done.

And this defendant, further answering, saith that when the above memorandum of the number of bales, the weights, the price, and the place where the cotton was stored, was handed this defendant by Mr. Metcalf, he remarked that the weights were the original weights, as taken from the warehouse receipts. This defendant replied that, for the purpose of facilitating the statement, *that* this defendant would propose to pay for the cotton in the certificates of deposit as aforesaid, allowing four hundred and eighty pounds to the bale; and when the cotton was put in order and reweighed, whatever difference there was in the weights could be settled. This Mr. Metcalf declined, and insisted I should take it
100 at original weights, as per warehouse receipts, and the order it was in where it was, which this defendant refused, as it was not the contract, and we parted. In a short time after this defendant called at Mr. Metcalf's office to make a further effort to settle the difficulty, and then for the first time Mr. Metcalf insisted on settleing with me at twenty-three cents, instead of twenty cents, and by the original weight as aforesaid, and this, being rejected by this defendant, put an end to further controversy.

This defendant, further answering, saith that, as Mr. Metcalf and complainants had to 1st September in which to appeal from the decision of the provost-general, and as this defendant had been informed that General Steedman had meanwhile prohibited any interference with that cotton, this defendant did not deem it proper to commence the opera-

tion of putting said cotton in order until the action of the complainants was disclosed at the expiration of the thirty days, in which time they had the right of appeal; and at the experation of this time, no appeal having been taken, this defendant made known to General Steedman this defendant's willingness to proceed to work, and the order of the 5th September was granted and served on this defendant, a copy of which is hereto attached, and marked Exhibit G, and this defendant proceeded at once to carry out said order, and had procured bag-
101 ging and rope, and sent competent hands to put said cotton in shipping order, and doing the same when the military order and the injunction of this honorable court arrested this defendant's proceedings.

And this defendant, further answering, denies all unlawful combination and conspiricy with the said Garsed or any other person for the purpose of pursecuting or urging the complainants or the said Metcalf, in any shape, manner, or form; and he further denies all unlawful combination and confederation as by this bill charged; without this, that there is any other matter or thing, material or necessary for this defendant to make answer unto, not herein and hereby fully answered, traversed, confessed, or avoided, or denied, is true, to the best of the knowledge or belief of this defendant, all which he is ready to maintain, aver, and prove to this honorable court, as it shall direct, and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

GEORGE SCHLEY,
In his proper Person.

GEORGIA, *Richmond County:*

Personally appeared George Schley, who, being sworn, saith
102 tl at the facts set forth in the above answer, so far as they relate to his acts and deeds, are true of his own knowledge, and that so far as they relate to the acts and deeds of others he believes them to be true.

GEORGE SCHLEY.

Sworn to before me this October 19th, 1865.

GEORGE THEW,
Notary Public.

EXHIBIT A.

GEORGIA, *Richmynd County:*

Know all men by these presents, that I, George Schley, of the county and State aforesaid, for and in consideration of the sum of ten dollars, the receipt whereof is hereby acknowledged, do, by these presents, release and surrender unto John Garsed, Thomas S. Metcalf, W. A. Beall, and Jeremiah Beall all my right, title, and interest, whether the same be in law or equity, which I have in and to, or growing out of, the purchase and sale of nine thousand seven hundred and seventy-eight bales of cotton at Eufaula, in Alabama, and Southwest Georgia, as set forth in the bill of W. A. Beall and Jeremiah Beall against John Garsed, George Schley, and Thomas S. Metcalf, in Richmond superior court, hereby surrendering and releasing any right or claim to any part thereof in any shape, manner, or form, directly or indirectly, to the aforesaid parties.

In witness whereof I have hereunto set my hand and seal this
103 ninth day of October, eighteen hundred and sixty-five.

GEORGE SCHLEY. [L. S.]

Signed, sealed, and delivered in the presence of—

JAS. S. HOOK,
Judge S. C. M. Dist.

EXHIBIT B.

GEORGIA, *Richmond County:*

It is agreed by the undersigned, Thomas S. Metcalf and George Schley, that in consideration of the said George Schley hauling and storing on his farm near Augusta and in the county near his residence, or other place, all the cotton he can, to be taken from Warren Block, and the piles of my cotton thrown and delivered in and near the fields of Charles DeLaiyle and other places, by the acts of the military authority of the Confederate States commanding the city ot Augusta and vacinity, the said George Schley shall have one bale in every three thus hauled and stored, the remaining two-thirds to be held free of expense of any kind, and at his risk; the said George Schley to deliver the said two-thirds, irrespective of weights, in Augusta, at such point as the said Thomas S. Metcalf shall designate, such delivery to be made free of expense, as speedily after notice as may be considered a reasonable time, provided said cotton has not been destroyed at the con-
104 clusion of the holding and storing of the said cotton. The number of bales shall be endorsed on this agreement.

In witness whereof we have hereunto set our hands this sixth day of February, eighteen [hundred] and sixty-five.

THOMAS S. METCALF.
GEORGE SCHLEY.

EXHIBIT C.

[Telegram.]

PHILADELPHIA, *July 6th*, 1865.

To GEORGE SCHLEY,
Augusta, Ga.:

I accept one, (1,) two, (2,) and three (3) lots in gold and greenbacks; will be sent by next vessel by Adams' Express. Send forward the cotton. I will return by steamer on Wednesday next.

JOHN GARSED.

EXHIBIT D.

Believed to be in good order as a whole lot, and to average 500 lbs. to the bale. They belong to and was bought by a large planter in *the* Southwestern Georgia, and can this day be bought for 20c., in greenbacks. They are mostly crop-lots entire, and therefore are desirable for spinners. As cottons in that section are long staple, there is but very little doubt but that they can be had at that price a short time hence if a buyer should come out with the cash and go down and see him
105 and the cotton.

EXHIBITS D D.

AUGUSTA, *June 28th*, 1865.

Mr. JOHN GARSED:

(No. 1.) MY DEAR SIR: I controle 2,089 bales of selected cotton, which you saw this morning at my gin-house, which I agree to sell you, delivered where it is, but reweighed, at twenty-five cents per pound in greenbacks, payable in Augusta. You have the priviledge by the 6th of July to close the trade by telegraph, and will in that event wait for the money until you can reach here with it.

(No. 2.) I have 600 bales of my own, of the same lot, which you can have for eighteen cents in gold, payable here, as soon as you can return with it.

(No. 3.) I also control, and will have authority to sell, by the 3d of July, 9, 778 bales of cotton stored as follows:

1,406 bales at Eufaula, Alabama.
1,194 bales at Dawson, Georgia.
2,556 bales at H. C. Cook's warehouse, Albany, Georgia.
3,522 bales at Sims & Rusk's warehouse, Albany, Georgia.
1,100 bales at Price's warehouse, Americus, Georgia.

9,778 bales; which cotton I will sell, delivered where stored, at twenty-three cents per pound, the cotton to be reweighed, and payable in
106 greenbacks. This purchase secured after I telegraph you.

Very respectfully, yours, &c.,

(Signed) GEORGE SCHLEY.

Freight and drayage will be about $5 per bale to Savannah. Insurance one per cent.

EXHIBIT E.

DEAR GARSED: Since you left town I saw the party controlling the large lot of cotton, No. 3, and it is agreed that if you telegraph to take it, they will ratify what I have agreed; so this makes it unnecessary for me to telegraph. Monday, write and send by Glascow how I shall telegraph you, to whose care or how, should it be necessary at any time. I wish you God speed on your journey; too dark to see how to write more.

Truly your friend,

GEORGE SCHLEY.

28th June, 8 o'clock.

EXHIBIT F.

AUGUSTA, *July 1st*, 1865.

To JOHN GARSED,
109 *Chesnut St., Philadelphia:*

I misunderstood parties giving you to 6th, on No 3, the nine thousand bale lot. If you wish the lot telegraph, and I will answer if they will sell. Answer immediately.

107 GEORGE SCHLEY.

EXHIBIT G.

HEADQUARTERS DEPARTMENT OF GEORGIA,
Augusta, Sept. 5th, 1865.

It appearing that George Schley is ready to proceed at once, to have the cotton embraced on the within order put in shipping order at the

expense of Thomas Metcalf, W. A. Beall, and Jeremiah Beall, the said Metcalf and Bealls will put him in possession of copies of the receipts or orders on the several warehouses and places named in the aforesaid order, to enable him to get possession of the same; and it also appearing that John Garsed is ready and willing, as fast as each lot named is delivered to him, after having had the same reweighed and put in such shipping-order, to pay for the same, it is ordered that the said Thomas S. Metcalf, W. A. Beall, and Jeremiah Beall, without delay or prevarication, deliver to the said George Schley, copies of such warehouse-recepts or orders on the several warehouses or places of deposit of said several lots of cotton, as mentioned in the said order of the second of August, 1865, issued from these headquarters, that will enable him to get possession of said cotton, free of charges for the storage or otherwise of the same, and that said George Schley proceed to have
108 the same put in shipping order, by putting on new rope, and bagging or repacking the same, as in his judgement may be required, and when so done, to reweigh the same, the expenses to be charged to the said Thomas S. Metcalf, W. A. Beall, and Jeremiah Beall, and when so done, to have correct invoices of the same made out, and as fast as each lot in each of the above warehouses or place of storage is completed, the said George Schley will pay, in Augusta, to the said Thomas S. Metcalf, W. A. Beall, and Jeremiah Beall, or to such one of them as they may designate, in writing, to receive and receipt for the same, the amount of each invoice as fast as ready.

JAMES B. STEEDMAN,
Maj.-Genl. Comd'g.

109 STATE OF GEORGIA:

In Richmond superior court, April term, 1866.

BETWEEN WILLIAM A. BEALL AND JEREMIAH Beall, complainants, *and* JOHN GARSED, GEORGE SCHLEY, AND THOMAS S. Metcalf. } Bill for relief and injunction.

The seperate answer of Thomas S. Metcalf, one of the defendants, to the complainant's bill of complain*ants.*

This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage on account of the errors, omissions, deficiencies, and inconsistenc'es in said complainant's bill of complaint contained, for answer thereto, or to so much *or so much* thereof as he is advised is at all material and necessary for him to answer, answering, saith:

That it is true, as stated in said bill of complaint, that the complainants and this defendant were, in June last, jointly owners of the cotton set forth in the first and second paragraphs of said bill of com-
110 plaint, in the proportions therein stated. This defendant further answers that it is true that a large quantity of cotton belonging to him, in the city of Augusta, was, in the winter of eighteen hundred and sixty-four and sixty-five, removed from its place of storage by the military order of Major Gen'l D. H. Hill, and left scattered and unprotected in the streets, and in the common of said city, in which cotton the complainants had no interest. This defendant did agree with George Schley and John A. Moore to remove and secure said cotton, giving

them one-third of it for their doing so; and they did remove and secure a large quantity. And it is also true that said George Schley, in the month of June aforesaid, offered the cotton so secured by him to John Garsed, his own interest at eighteen cents per pound in gold, and the interest of this defendant at twenty-five cents in currency, of which this defendant was to receive one hundred dollars per bale, and the residue was for the benefit of said Schley. Said Garsed was to proceed to Philadelphia and report by telegraph, by the sixth of July, whether he would close the trade as proposed. To this arrangement this defendant agreed, and after agreeing to it, stated to said Schley that the lot of over nine thousand bales, referred to in the beginning of said bill of complaint, could probably be bought as it stood, at the old
111 weights, for twenty cents per pound, if the money were ready to be paid down on that day, and as charged in the bill of complaint furnished said Schley, with a memorandum of the lots of cotton, of which he believes the copy in the complainant's bill to be correct. It is true that the said George Schley did urge this defendant to give till the sixth of July for an answer to this offer, and it is true that said Schley had a very strong interest in doing so; for the suggestion of this defendant was for a sale at twenty cents per pound, and the offer made by said Schley to said Garsed was at twenty-three cents, a difference which would have enabled said Schley to realize from the transaction more than one hundred and forty thousand dollars. But it is not true that this defendant ever authorized said Schley to give time for accepting said offer till the sixth of July, or to any other future day whatever; for while the cotton for which a trade had been agreed to by this defendant was his own sole property, of which he had a perfect right to dispose at pleasure, the large lot now in controversy was owned by himself and the complainants, as stated in the bill of complaint, and this defendant had no authority to make any such arrangement in respect to it, as this defendant distinctly stated to said Schley at the time. It is true that this defendant expressed an
112 opinion to said Schley that the market would not advance, and that the cotton could probably be had at the same price for several days then to come, but this defendant positively denies ever having authorized said Schley to make any definite offer of such delay; and even if it had been authorized he is advised and avers that it was a promise without any consideration, and therefore not binding; and moreover, that it was, if ever made, a promise in reference to goods exceeding the value of ten pounds sterling, to be performed in future, and not written nor signed by this defendant. This defendant did inform said Schley that he could make no other arrangement without consulting the complainants. This defendant believes that said Schley, after conversing with him on the subject, did report to said Garsed that he could have till the sixth of July to take said large lot of cotton at twenty-three cents per pound, but he expressly avers that this report was never authorized by him, this defendant; and he is informed by said Schley himself, and believes that, as soon as the offer to Garsed above stated was reported to this defendant by said Schley, said Schley did promptly telegraph said Garsed that he had "misunderstood the parties," meaning that he had misunderstood this defendant as to giving to the
113 sixth of July to accept said cotton; and this defendant believes that said dispatch was 'ent by said Schley in good faith, under the conviction that this defendant had been misunderstood, and therefore misrepresented; for so soon as said Schley informed this defendant that he (Schley) had made this offer to said Garsed, this defendant at

once repudiated and denied having ever made it, and said Schley agreed at once so to telegraph said Garsed, and did telegraph in language of his own choosing, and not dictated by this defendant. This defendant denies that any advance had taken place in the price of cotton between the time when he made the suggestion to said Schley as to the sale of said large lot of cotton and the time when said Schley telegraphed that he had "misunderstood the parties," as above stated. This defendant believes that the despatch of said Schley, quoted in said bill, that the parties refused to sell "unless funds are here," and so forth, was sent by said Schley to said Garsed; and he avers that he did so refuse, and always had so refused. This defendant admits the statement in said bill of complaints that said Garsed concluded the proposed trade for the cotton first offered him by said Schley, and that one hundred dollars per bale has been paid to him in currency for the portion thereof
114 belonging to him, which arrangement was concluded without objection or delay on his part, and in ignorance of the fact that said Schley had received any larger price for it. Said Schley did inform this defendant that said Garsed was about to carry a claim for the large lot of cotton before the military authorities, and some three or four days afterwards this defendant was summoned before Brigadier-General C. H. Grosvener, provost-marshal-general of this military department, who, without hearing this defendant in the premises, stated that he had decided that all the transactions above stated were one and the same trade, and that the remainder of the cotton must be delivered. This defendant asked for time, and to be heard by council, which was allowed, as stated in the bill.

The statement in said bill of complaint in reference to the claim of Mr. Glenn and his conference with General Grosvener, is correct so far as this defendant knows or believes, and the statement in regard to the employment of Leopold Cohn to compromise the dispute *are* also true, this defendant finding that a heavy sacrifice would probably be forced on him and his partners by military authority, without regard to the justice of the case, concluding to get out of the difficulty, if possible, on the easiest terms he could; and the details of this negotiation, so
115 far as this defendant knows or believes, are correctly stated in said bill.

The statement in said bill as to the arrest and imprisonment of this deponant, on the charge of bribery, *are* correct; and it is true that he obtained his discharge, by giving an explanation, of which he believes the copy in said bill to be correct, which explanation was given after negotiation, through a personal friend of the military commander, who informed the defendant that the abandonment of all right to appeal from General Grosvenor's order was an indispensable requisite to his discharge. On that assurance, and under the advice of his council, in order to avoid the consequences of a military trial, this defendant did agree to abandon his right of appeal, and by that agreement he has abided, in all that has since occurred. The order from the War Department, under which all previous orders in regard to this cotton were revoked, was issued without any solicitation from this defendant, and without eaven his knowledge; nor was any application to that Department made by this defendant, or by any other person by his authority, he being resolved to abide by the pledge he had given not to appeal from General Grosvenor's order. The order from General Grosvenor is correctly stated in the bill, in reference to transferring this cotton to said Garsed. No money was ever paid or tendered to this
116 defendant, under said order. On the thirty-first of August, an

order was issued by General Grosvenor, as this defendant believes, without eaven the knowledge of General Steadman, requiring this defendant to receive from said Garsed, in payment for said cotton, not money, but said Garsed's drafts on New York, at thirty days; and when remonstrated with by this defendant's council, on such a change in his order, said Grosvenor, as this defendant is informed and believes, threatened and swore that this defendant hesitated to *to* comply with this last order, he would renew the charge of bribery and have him arrested at once.

The orders of first and fifth of September, recited in this bill, are correctly stated, as this defendant believes. The orders recited in said bill of thirty-first of August and fifth of September were issued without any notice to the defendant, and as he believes only at the instance of said Garsed or said Schley, or both of them. The order of the first of September he believes was issued by General Steedman, immediately on his being informed by this defendant's council of the order of the thirty-first of August.

This defendant has no personal knowledge of the conversation alleged in said bill to have taken place between General Steedman and the council of the complainants. This defendant believes that at the
117 time of filing this bill, said Garsed and said Schley were taking possession of the cotton in dispute, this defendant having been forced by military power to give up a large portion of the warehouse receipts to said Schley, and bound by his pledge already referred to, to acquiesce in these proceedings; this defendant does not believe that said Garsed ever forwarded or brought any money to Augusta, under the pretended contract for the sale of said cotton in dispute, nor in persuence of the order of General Grosvenor, of the second of August.

This defendant believes and expressly avers, that after prices had greatly advanced, said Garsed and said Schley, whether with or without other secret confederates, as charged in the bill, as to which this defendant has no means of knowledge, did continue, by deceiving the military authorities, to set up said pretended contract, with a view of forcing this defendant and the complainants to pay for a compromise; and he believes that for this purpose they have used, and continue to use, the intimation of a renewal of the prosecution for bribery, which this defendant expressly avers to be utterly unfounded in fact.

This defendant admits that he has utterly refused to join the complainants in any effort to set aside or resist the orders of the mili-
118 tary authorities in regard to the cotton, being bound by his pledge to acquiesce in the decision given, it is true, under the apprehension of worse consequences, but given with the full intention at that time of abiding by it.

And this defendant would have abided by said decision had it not, since the filing of this bill, been set aside by orders from the War Department. This defendant repeats the statement made above that he had no agency whatever, directly or indirectly, in procuring these orders from the Department; but he is advised and insists that said orders superceded all previous orders in the case, and annulled the decision of General Grosvenor, from which this defendant had promised not to appeal, which promise he insists can no longer affect his rights in the premises.

This defendant prays that the injunction granted in this case against the said Garsed and the said Schley, be made perpetual, and that the cotton in dispute be decreed to be the absolute property of the com-

plainants and himself, and that the pretended contract set up by said Garsed and Schley be decreed to be utterly void and of no effect.

And having fully considered the matters set forth in said bill of complaint, so far as he is advised it is materal for him to answer, this defendant to be hence discharged with his costs.

WM. T. GOULD,
Sol. for Complt.

119 GEORGIA,
Richmond County:

Thomas S. Metcalf, being duly sworn, saith that what is set forth in the foregoing answer, so far as relates to his own act and deed, is true of his own knowledge, and so far as relat's to the act and deed of any other person or persons, he believes to be true.

THOS. S. METCALF.

Sworn to and subscribed before me April 19th, 1866.
JAMES T. GARDINER, *I. I. C.*

120 *Further answer of John Garsed.*

In the superior court of Richmond County, Georgia.

WILLIAM A. BEALL AND JEREMIAH BEALL *vs.* JOHN GARSED, GEORGE SCHLEY, AND THOMAS S. Metcalf. } Bill for discovery, relief, and injunction.

The defendant, John Garsed, for further answer to the bill in the above case than that which was filed on the twel'th day of October last, in answer to the allegations of said bill, and especially those which charge that said Schley, (meaning George Schley, esq., one of the defendants to this bill,) being very anxious to make such sale, &c., reported to said Garsed that he could get said large lot also, if he "would telegraph his acceptance by the 6th day of July;" and to the allegations that the said Schley had manufactured the contract for the said large lot of cotcotton; and the charge that the contract relied upon by this defendant in his answer was a "pretended contract, manufactured by an interested person;" and the allegation that "the said Garsed and Schley well knew that neither the said Metcalf nor your orators (meaning the said William A. and Jeremiah Beall) ever made such a contract as is pretended, or any contract for the sale of said cotton," this defendant, answering, saith
121 that, on the twenty-eighth day of June, eighteen hundred and sixty-five, the said George Schley addressed to the defendant a note in writing, signed by himself, a copy of which, attested and marked Exhibit D, in which he, the said Schley, stated that he contracted and would have authority to sell, by the 3d day of July, nine thousand seven hundred and seventy-eight bales (9,778) of cotton stored at the places specified in said note, (which cotton constituted the subject of this litigation,) and that he would sell and deliver the same when stored at twenty-three (23) cents per pound, the cotton to be reweighed and payable in greenbacks, the purchase to be secured after he (the said Schley) should telegraph this defendant; and this defendant, further answering these allegations of the bill, saith that, on the evening of the day upon which the above note was written, the said Schley having meanwhile obtained the consent of the complainants and the said Metcalf, and their

authority so to do, as the agent or broker of the said owners of this cotton, addressed to this defendant another note, in writing, which was signed by him, attested to the answer of this defendant, already filed, as Exhibit A, in which he stated, referring to the matter of the
122 previous note, set forth as aforesaid, that he had seen the party controlling the large lot of cotton, No. 3, and it was agreed that if this defendant would telegraph to take the cotton, they (the owners) would ratify what he had agreed to; and, further answering these allegations, this defendant saith that, having thus made to him, by these two communications, an offer in writing by the said agent of the owners for the said owners of this cotton, of said cotton upon the terms in said writing proposed, this defendant hastened home, made his arrangements to effect this purchase, and at the time fixed, to wit, the sixth of July aforesaid, by a certain telegraphic message, which was in writing and signed by this defendant, he notified the said agent that he would accept the said offer, and that the said cotton should be paid for in gold and greenbacks, and be sent forward to this defendant; and also that this defendant would return by steamer on the next Wednesday, which message and ratification (or a copy thereof) attested to the answer already filed by this defendant, and is marked Exhibit B; and this defendant submits that the facts thus set forth in his additional answer should be considered by this honorable court in connection with
123 those already presented by him to the court, and such decree be rendered in the premises as has been prayed for by this defendant, and is consistent with justice and equity.

STARNER & JOHNSON,
Sols. for John Garsed.

STATE OF GEORGIA,
Richmond County:

Personally appeared John Garsed, who, being sworn, saith that the facts set forth in the above answer, so far as they relate to his act and deed, are true, and so far as they relate to the acts and deeds of others, he beleives them to be true.

Sworn to before me this March 12th, 1866.

Sworn to and subscribed before me this 12th March, 1866.

S. H. OLIVER,
Notary Pub., R. C.

124 In the matter of the bill of complaint filed by William A. & Jeremiah Beall against John Garsed, George Schley and Thomas S. Metcalf, and ordered to stand for trial of the equities set up by John Garsed against William A. & Jeremiah Beall and Thomas S. Metcalf, in the superior court of Richmond County, Georgia.

Interrogatories to be exhibited to Max Friedman, a material witness for John Garsed, who resides out of the jurisdiction of said court.

1st. Do you know the parties?

2nd. Were you in the city of Augusta and State of Georgia in or about the month of July, 1865, and did you at that time have any conversation with Thomas S. Metcalf in relation to any cotton sold by him, or said to have been sold by him to John Garsed, or did you hear any conversation between him and any other person on this subject; if yea, will you state all that was said by Metcalf in any such conversation?

3. Will you state anything known to you in favour of John Garsed as fully as if more particularly interrogated thereto?

STARNES & JOHNSON,
ALEXANDER H. STEPHENS,
125 *Attys. for John Garsed.*

Cross-interrogatories:

Who was present besides you and Mr. Metcalf at any conversation to which you testify?

WM. T. GOULD,
Sol. for T. S. Metcalf.

(Endorsed:) Richmond superior court. William A. and Jeremiah Beall, complainants, vs. John Garsed, George Schley, and Thomas S. Metcalf. Interrogatories for Max Friedman. Filed Decr. 24th, 1866.

126 STATE OF PENNSYLVANIA,
City and County of Philadelphia:

By virtue of a commission to us directed, issuing from the honorable the superior court of the county of Richmond and State of Georgia, we have this day caused Max Friedman, the witness therein named, to come before us, who, after having been duly sworn in the case stated in said commission, between William A. Beall, Jeremiah Beall, John Garsed, George Schley, and Thomas S. Metcalf, made the following answers to the interrogatories hereunto annexed:

MAX FR'EDMAN, being duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case stated in the said commission, did depose and say, in answer to the interrogatories thereon propounded, as follows, to wit:

Answer to the 1st interrogatory. I do know the parties to this suit.

Answer to the 2nd interrogatory. I was in the city of Augusta, in the State of Georgia, during the greater part of the months of June and July, in the year 1865. Thomas S. Metcalf talked to me in relation to the sale of some cotton by him to Mr. John Garsed; I was standing in Main street, Augusta—I think that is the name of the street—near Mr. Paulin's office, a cotton-broker. Thomas S. Metcalf came up to me, saying,
127 "Col. Friedman, you were a big fool that you did not purchase that lot of cotton of me that I wanted you to buy. Mr. Garsed, a man from Philadelphia, to whom I sold it, is now on his way up here from Savannah with his money, but is detained on account of low water in the river. I would give him two hundred thousand dollars to let me off from the sale;" this was said in the presence of Col. Waldenger, who was then stationed in command of his regiment at or near Augusta. Mr. Metcalf said to me, "That money you could have made easily;" he explained then to Col. Waldenger that I had contemplated buying that lot of him; I said, then, the lot was too large for me, as there were nearly ten thousand bales, and Mr. Metcalf had told me, in a former conversation with me, when he offered me the lot of cotton, that it could not be divided, as there were several parties interested in the cotton, and the lot had to be sold together; this explanation of his was given when I offered to take a thousand or fifteen hundred bales of cotton.

The conversation I have referred to in which I talked about purchasing the cotton was in the month of June; the conversation in which he told me that John Garsed had purchased the cotton was from the mid

dle to the latter part of the month of July, 1865; I had other fre-
128 quent conversations with him, but not on this subject.

Answer to the third interrogatory. I have stated all that I can remember about the matter. I can add that I know John Garsed; he is a merchant of excellent standing.

Cross-interrogatories:

Answer to 1st cross-interrogatory. Nobody was present at the conversation I had related, except Col. Waldenger. At the first conversation, when he offered to sell me the cotton, no one was present; at the second, when he told me that Mr. Garsed had bought the cotton, Col. Waldeneger was present.

M. FRIEDMAN.

Sworn to and subscribed before me this twenty-fifth day of January, 1867.

GEO. L. CRAWFORD, *Commissioner.* [L. S.]
CHARLES SERGEANT, *Commissioner.* [L. S.]

129 In the matter of the bill of complaint filed by William A. and Jeremiah Beall against John Garsed, George Schley, and Thomas S. Metcalf, and ordered to stand for trial of the equities set up by John Garsed against William A. and Jeremiah Beall, and Thomas S. Metcalf, in the superior court of Richmond County, Georgia.

Interrogatories to be exhibited to Gustavus A. Roth, a material witness for John Garsed, who resides out of the jurisdiction of said court.

1. Do you know either of the parties?
2. Were you in Augusta at any time during the year 1865, and did you then have any conversation with Thomas S. Metcalf in relation to the sale of cotton to John Garsed? If yea, will you give the date of that conversation, the circumstances and all that was said by Metcalf to you at the time?
3. State anything else you may know in favour of the said John Garsed.

STARNES & JOHNSON &
ALEXANDER H. STEPHENS,
Attys. for John Garsed.

130 (Endorsement:) Richmond superior court. William A. and Jeremiah Beall, John Garsed, George Schley, and Thomas S. Metcalf. Interrogatories for Gustavus A. Roth. Filed Decr. 24th, 1866.

STATE OF PENNSYLVANIA,
City and County of Philadelphia:

By virtue of a commission to us directed, issuing from the honorable the superior court of the county of Richmond, and State of Georgia, we have this day caused Gustavus A. Roth, the witness thereon named, to come before us, who, after having been duly sworn in the case, stated in said commission, between William A. and Jeremiah Beall, John Garsed, George Schley, and Thomas S. Metcalf, made the following answers:

GUSTAVUS A. ROTH being duly sworn to testify the truth, the whole truth, and nothing but the truth, in the case stated in said commission,

did depose and say, in answer to the interrogatories thereon propounded, as follows, to wit:

Answer to the first interrogatory. I do know the parties to this suit.

Answer to the second interrogatory. I was in Augusta, Georgia,
131 in 1865; I came there in the month of June, 1865, for the purpose of buying cotton for myself and for the house of Manning & De Forest, bankers, No. 19 Wall street, New York, with whom I was associated for the purchase of cotton. I was introduced to Mr. Metcalf by Col. Friedman; when I was introduced to him I had hardly any conversation with him about cotton, but only on general subjects; it was known in Augusta that Mr. Metcalf had a large lot of cotton for sale. I made some purchases in the country around, but that not being sufficient for me, and cotton rising, I went to the office of Mr. Metcalf to see him, but met him in front of Mr. Paulin's office. Mr. Paulin was a cotton-broker in Augusta. I then asked Mr. Metcalf if he had any cotton for sale, to which he replied, saying that he was very sorry that he had not some, but he had sold all of his cotton. I asked him then if he had any objection to tell me to whom he had sold it; he said he had sold it to Mr. John Garsed, of Philadelphia, and that he would rather have lost five hundred thousand dollars than to have done it. My reason for asking to whom he had sold it was that I might buy some from the man to whom he had sold it. This conversation took place about the fifteenth of
132 July, 1865; there were other persons present at the conversation, but we talked aside, out of their hearing. I left Augusta about the 10th of August, 1865.

Answer to the 3d interrogatory. I know nothing more, except that John Garsed is a large cotton-manufacturer in Frankford, Philadelphia.

G. A. ROTH.

Sworn to and subscribed before us this 25th day of January, 1867.

GEO. L. CRAWFORD, [L. S.]
Commissioner.
CHARLES SURGEANT, [L. S.]
Commissioner.

133 STATE OF GEORGIA,
Richmond County:

To the honorable William Gibson, judge of the superior court of the middle circuit of said State, and holding jurisdiction in chancery:

The petition of John Garsed respectfully showeth:

That he is a citizen resident of the State of Pennsylvania; that at the April term, eighteen hundred and sixty-six, William A. Beall and Jeremiah Beall commenced their suit by bill of complaints on the equity side of said court against your petitioners, George Schley and Thomas S. Metcalf, touching a large transaction concerning the purchase of nine thousand seven hundred and seventy-eight bales of cotton, fully set forth in said bill of complaint, and the answers of your petitioners and the said George Schley, and consequently involving as the foundation of said suit more than the sum of five hundred dollars, exclusive of costs; that the said complainants and the respondants to the said George and Thomas S. are residants and citizens of the State of Georgia, (the said Schley having, however, departed this life since the filing of
134 said bill of complaints;) that on the twenty-fourth day of September, eighteen hundred and sixty-six, under the forty-one hundredth section of the code of said State, the same being in vacation, said suit was dismissed by the direction of Benjamin H. Hill, the solicitor for complainants; that at the October term of eighteen hundred and sixty-

six your petitioner, by his attorneys, Starnes & Johnson and Alexander H. Stephens, moved to rescind and set aside said dismissal, and that said bill *unite* all the parties as made by it, be retained and proceeded on for the purpose of adjudicating the relief sought by the answer of your petitioners against the said complainants and the said defendant, Thomas S. Metcalf; that, after hearing argument on said motion, the court decided as follows: "I do therefore order, because the bill of William A. Beall and Jeremiah Beall against John Garsed, George Schley, and Thomas S. Metcalf having been dismissed in vacation, that the answer of the said Garsed has set up an equitable claim for relief, the proper subject-matter of a cross-bill against the said William A. Beall, Jeremiah Beall, and Thomas S. Metcalf, originally codefendants, which claim under forty-one hundre'th of the code, entitles him to a hearing
135 and trial upon said claim against them; that they, the said William A. and Jeremiah Beall and Thomas S. Metcalf, be retained in court as parties, to give said Garsed all the relief to which he may be entitled, under the alleged contract; that the bill, although dismissed as to any discovery and relief on the part of complainants, be retained to answer all legal purpose for which it may be used in the litigation, and that said Garsed, having really made himself complainant, be held and considered as a complainant, entitled to all the rights and subject to all the disabilities of that position, and said William A. Beall and Jeremiah Beall and Thomas S. Metcalf be considered as defendants, and that the cause thus stand in court. And your petitioner further showeth that at said term, and before the final adjournment of said court, he, by his council, Starnes and Johnson, as said decision was not a final disposition of the said cause, filed his exceptions to said decision, answering to the statute in such case made and provided, which were and are entered of record in said court in order, if necessary, that error may be duly assigned on the same hereafter, alleging that said decis-
136 sion was erroneous, which said bill of exceptions was duly allowed and certified on the ninth day of January, eighteen hundred and sixty-seven, by the honorable William M. Reese, judge of the superior court of the northern circuit, who heard and decided on said motion; that the said cause thus situated by this proceeding herein specified is still pending, and not finally disposed of. That he has reason to believe, and does believe, that from prejudice or local influence, he will not be able to obtain justice in said court, which he has notified by his affidavit hereto annexed.

Wherefore your petitioner respectfully prays that said cause may be removed into the next circuit court of the United States to be held in the district of Georgia, in pursuence of an act of Congress entitled "An act for the removal of cause' in certain cases from State courts," approved July the twenty-seventh, eighteen hundred and sixty-six; and also in pursuence of an act entitled to amend an act entitled "An act for the removal of causes in certain cases from State courts," approved March the second, eighteen hundred and sixty-seven, and we hereby tender his bond, in accordance with the provisions of said acts of Congress,
137 in the sum of dollars, with *a* as his securities for his entering in said court on the first day of its session copies of all process, pleadings, depositions, testimony, and all other proceedings in said suit, and doing such other appropriate acts, as by the first of the aforesaid acts are required to be done upon the removal of a suit into the United States court; and, as in duty bound, your petitioners will ever pray, &c.

STAINS AND JOHNSON,
Sols. for John Garsed.

GEORGIA,
Richmond County:

Personally came before me John Garsed, who, being duly sworn, deposith and saith that the facts and allegations contained in the foregoing petition are true, and especially that he has reason to and does believe that, from prejudice or local influence, he will not be able to obtain justice in the said State court in the trial of the case therein described and set forth.

JOHN GARSED.

Sworn to and subscribed before me this 13th day of April, 1867.
WILLIAM GIBSON,
J. S. C., M. Dist.

138 GEORGIA,
Richmond County:

Know all men by these presents that we, John Garsed, as principal, and Hugh McLean, as his surity, are jointly and severally bound to Lafayette McLane, clerk of the superior court of said county, and to his successors in office, for the use of all concerned, in the sum of five hundred dollars, for the true payment of which we, and each of us, bind ourselves, our heirs, executors, and administrators firmly by these presents, signed and sealed this the thirteenth day of April, eighteen hundred and sixty-seven.

The consideration of the above obligation is this: whereas the said John Garsed has prayed to the judge of the superior court of said county, as chancellor, for the removal in the fifth circuit court of the United States for the district of Georgia of a certain case pending on the equity side of said superior court, between the said John Garsed and William A. Beall, Jeremiah Beall, and Thomas S. Metcalf, under acts of Congress in such case made and provided, approved respectively on the twenty-seventh day of July, eighteen hundred and sixty-six, and the second day of March, eighteen hundred and sixty-seven; and
139 whereas said prayer has been granted:

Now, therefore, if the said John Garsed shall enter in said United States court, on the first day of its session at the next term thereof, copies of all process, pleadings, depositions, testimony, and all other proceedings in said suit, and do such other appropriate acts as by the first of the aforesaid acts of Congress are required to be done, upon the removal of a suit into the United States courts, then this obligation to be void, else to remain in full force and virtue.

JOHN GARSED. [L. S.]
HUGH McLEAN. [L. S.]

Signed, sealed, and delivered in the presence of—
WILLIAM GIBSON, *J. S. C.*

140 STATE OF GEORGIA,
Richmond County:

Be it remembered that William A. Beall and Jeremiah Beall filed their bill in equity against John Garsed, George Schley, and Thomas S. Metcalf, returnable to the April term, 1866, of the superior court of said county, which said bill prayed for discovery and relief, and for an injunction against the said defendants, and which said injunction was in the form of law granted by the honorable Iverson L. Harris, then acting as judge of the Ocomulgee circuit, in said State, that to the said April term, 1866, the defendants filed their answers, and in the answer of the

said John Garsed, he, the said John, answered the equities set up by the said complainants, and averred matter which alleged that he was entitled to equities against the complainants and the said Thomas S. Metcalf, which arose not only out of the facts which were responsive in his answer, and in that of the said George, to the complainants' bill, but which could be made, *and* by other testimony, and the said defendants prayed that said equities might be heard and determined between himself and the said William A. and Jeremiah and Thomas S. in that proceeding.

141 And be it further remembered that after the said April term of said court, and on the twenty-fourth day of September, 1866, the complainants, by their council, Benjamin H. Hill, esquire, by written communication to the clerk of said court, then and there dismissed, or attempted to dismiss, said cause, a copy of which communication was by said clerk entered on the docket of equity causes used by said court, and opposite to the entry of said cause, upon said docket, as follows, to wit:

"The attempt to seize and remove the cotton under military orders by the defendants, as set forth in the above bill, having been abandoned, the complainants do hereby dismiss the bill. September 24th, 1866.

(Signed) "BENJ. H. HILL,
"Sol. for Complts."

And be it further remembered that, for the purpose of trying the rights of complainants to dismiss said case, at the October term of said court, the said John Garsed, by his council, moved for and obtained an order, calling on the said complainants to show cause why the said entry should not be rescinded and set aside, a copy of which order was duly served, and due and proper notice thereof given, which said order, on the day of said trial, when the same came on to be heard, was amended by the

142 following written motion, of which due notice was given, to wit:

"The bill of William A. Beall and Jeremiah Beall, as complainants, against John Garsed, George Schley, and Thomas S. Metcalf, as defendants, having been dismissed in vacation by complainants, as to all relief and discovery sought by them, it is ordered, on motion of counsil for the defendant John Garsed, that the said bill, with all the parties as made by it, be retained, and do proceed for the purpose of adjudicating the relief sought by the answer of John Garsed against the said complainants and the defendant Metcalf."

And be it further remembered, that when the issues arising upon the said rule nisi were reached by his honor James S. Hook, judge of said court, the said judge directed that the hearing of the same should be deferred to an adjourned session of said court, to which the counsel for the parties consented, and the said court having been adjourned to the 6th day of November, 1866, and his honor William M. Reese, one of the judges of the superior court of said State, having been requested to hold said court, and being on that day present, the said issues were argued by counsil and heard by the court on the said 6th day of Novem-

143 ber, and on the next day, the 7th, the argument having been finished, with the consent of counsel it was ordered by said Judge Reese, and the order placed upon the minutes of said court, that the said judge should be authorised to deliver his opinion upon said rule nisi, and said amendment in vacation, so that the same be filed by the 14th day of November, 1866, and that when so filed the same should take effect as if delivered at said term, and be entered upon the minutes of said court, and on the 7th day of November, then next ensuing, the

said judge filed his opinion and judgement in said case with the clerk of said court, and which was entered upon the minutes of said court, by which judgement the said judge held and decided as follows, to wit: "I do therefore order, because the bill of William A. Beall and Jeremiah Beall against John Garsed, George Schley, and Thomas S. Metcalf, having been dismissed in vacation, that the answer of said Garsed has set up an equitable claim for relief, the proper subject-matter of a cross-bill against said William A. and Jeremiah Beall and Thomas S. Metcalf, originally a codefendants, which claim, under section 4400 of the code, entitles him to a hearing and trial upon said claim against them;
144 that they, the said William A. and Jeremiah Beall, and Thomas S. Metcalf, be retained in court as parties, to give said Garsed all the relief to which he may be entitled under the alleged contract; that the (bill, although dismissed as to any discovery and relief on the part of complainants, be retained to answer all legal purposes for which it may be used in the litigation, and that said Garsed, having really made himself complainant, be held and considered as a complainant, entitled to all the rights and subject to all the disabilities of that position, and said William A. Beall and Jeremiah Beall and Thomas S. Metcalf be considered as defendants; and that the cause thus stand in court.)

And now, at this October term, 1866, as aforesaid, continued into the month of January, 1867, appears the said John Garsed, by his counsel, and saith, that as the said decision and judgement of the said court does not amount to a final disposition of said cause, *and* he now files his bill of exceptions to the same, to be entered of record in order if necessary that error may be duly assigned on the same hereafter, and so the said John Garsed, by his counsel, excepts to the decission and judgement as wholly erroneous, and he prays that if such erroneous decission
145 may be found to have effected the final result of this case, he may be permitted, in terms of the law in such case made and provided, to assign error upon this bill of exceptions, and that a reversal and new trial may be allowed thereon.

ALEXANDER H. STEPHENS,
STARNES & JOHNSON,
Attorney for John Garsed.

STATE OF GEORGIA:

I, William M. Reese, one of the judges of said State, hereby certify that the foregoing bill of exceptions is true, and contains or refers to all the evidence material to a clear understanding of the errors complained of, and the same is allowed and ordered to be placed upon the record during the October term, 1866, continued to January, 1867, as stated in said bill of exceptions.

WILLIAM M. REESE,
Judge of Superior Court of the Northern Circuit.

JANUARY 9TH, 1867.

146 *Rule nisi & motion in Richmond superior court by John Garsed vs. William A. & Jeremiah Beall and Thomas S. Metcalf.*

The learned and eminent counsil engaged for and against the rule & motion above discribed agree in saying, if the answer of Garsed sets up an equitable claim against complainants, that the dismissal of complainants' bill in vacation by themselves will not interfere with the right of Garsed to a hearing and trial on such claim, without institut ing any other suit to have this claim determined.

Then the question must necessarily be considered and decided

w'ether the answer of Garsed does set up an equitable claim against said Wm. A. & J. Beall & Thomas S. Metcalf. I think the answer sets up such equitable claim, & such claim as would usually be brought to the notice of the court in a cross-bill. The bill of said William A. & Jeremiah Beall, while it very largely discusses the military orders under which the cotton was about to be seized, does bring into question the alleged contract on which the military proceedings was based, declares the contract *the contract* to be a nul'ity, and prays not only that Garsed may be temporarily restrained, but that he may be brought to a
147 hearing on the alleged unlawful proceedings and perpetually enjoined. These allegations and prayers, in my judgement, involve the claim of Garsed to the cotton under such contract, and a court of equity having thereby obtained jurisdiction of the matter will, in order to do complete justice to all the parties concerned, and to avoid multiplying suits, hear both sides, and all persons made parties fully, as to the right to the cotton, whether the right of Garsed is brought forward by using answers simply or by answer assuming the nature of a cross-bill. Garsed' answer, filed under section 4093 of the new code, is really a cross-bill, because it is not merely defensive, but makes allegations and prays for specific relief. It urges that the contract is valid and should be specifically enforced, or compensation given for its breach by the parties concerned in making & violating the same. Courts of equity, in Georgia, have the same machinery possessed by courts of law to assess damages, and in this State are reluctant to surrender jurisdiction. That this is a true statement of the law in Georgia see 7 Page, 238; 14 pa. 323. Believing these views to be true, I decide that the complainant in the bill brought into question said contract, that the
148 answer to said bill claiming such contract to be valid and of right should be specifically performed, or ample compensation paid for its violation by all the parties making and breaking the same, sets up an equitable claim for relief, which, in England, would be obtained by a cross-bill; and that the dismissal of their bill by complainants cannot, under section 4100 of the code, prevent Garsed from having his equitable claim against William A. & Jeremiah Beall & Thomas S. Metcalf, brought to a hearing & trial in this case, without instituting any other proceedings.

This question being thus disposed of, I shall consider separately the rule nisi and motion. I feel compelled to *to* discharge the rule nisi, as it is termed, at the cost of the party moving the same, because the act of the clerk in entering the dismissal of the bill on the equity docket was proper, and did not operate as a dismissal of the case made up by the pleadings between John Garsed and William A. & Jeremiah Beall and Thomas S. Metcalf.

As to the motion offered by Judge Stephens, I am also compelled to refuse it in the form presented, as it proposes distinctly to continue the case in court as it was originally brought there, not in the form
149 which the dismissal of the bill & equitable claim set up by way of answer have now placed it. While the former complainants W. & J. Beall must be retained in court "to*
to be given by Garsed & Metcalf, originally a confidant of Garsed, but really, as the case now stands, the same position with the Bealls must be sustained to give Garsed all the redress which he may be entitled to, under the law and the facts, from said Metcalf; and while the bill must be retained to show how the parties came into court, and to elucidate the answer, & for all other proper objects, justice and law both re-

* Sic in original.

quire that the party now complaining should assume the advantages & disadvantages of that position, whatever they may be. Garsed is now seeking relief; he now claims to enjoin the other parties if certain contingencies shall occur, and, if he should obtain a decree, he will claim and receive an execution in his favour against the defendants. The Bealls and Metcalf are strictly defendants; they claim nothing of Garsed; they desire to go out of court, and, if compelled to stay, they propose and can do nothing except to resist the claim of Garsed.

It appears to me as most fit and proper in a court of equity,
150 which looks more to substanec than to form, that Garsed should now be considered the complainant, and the Bealls & Metcalf defendants. In 8th Geo., 189, authority will be found, as I believe, fully sustaining their position. I do therefore order, because the bill of William A. & Jeremiah Beall against John Garsed, George Schley & Thomas S. Metcalf has been dismissed in vacation, but the answer of said Garsed has set up an equitable claim for relief, the proper subject-matter of a cross-bill against said William A. & Jeremiah Beall, & Thomas S. Metcalf, originally a confident, which claim, under section 4100 of the code, entitles him to a hearing & trial upon said claim against them, and that the said William A. & Jeremiah Beall and Thomas S. Metcalf be retained in court as parties, to give said Garsed all the relief to which he may be entitled under the alleged contract; that the bill, though dismissed as to any discovery and relief on the part of complainants, be retained to answer all legal purposes for which it may be used in the litigation; and that said Garsed, having really made himself complainant, be held and considered a complainant, entitled to all the rights and subject to all the disabilities of that position, and said William A. and Jeremiah Beall, and Thomas S.
151 Metcalf, be considered as defendants, and that the case thus stand in court. I do further order that the clerk of the superior court of Richmond County enter this order, and the original rule nisi, and one original motion on which the decision is made, in the minutes of the superior court of Richmond County, the rule nisi to be marked as "Exhibit A," and motion as "Exhibit B."

WILLIAM M. REESE,
Judge of Supr. Court of the Northern Circuit.

Nov. 10th, 1866.

EXHIBIT B.

152 WILLIAM A. BEALL & JEREMIAH BEALL } Bill for relief and injunction. Filed April term, 1866, Richmond superior court.

The clerk of said court, having in vacation made an entry upon the docket, at the instance of the complainants, dismissing the above case, it is now, upon motion of the counsel of the defendant, John Garsed, ordered that the said complainants do show cause, on Friday, the 26th day of October, instant, why the said entry should not be re'cinded and set aside, and that a copy of this rule be served upon the said complainant or their counsel, and on Thomas S. Metcalf or his counsel, immediately.

A. H. STEPHENS,
STARNES & JOHNSON,
Solt's for Defts.

A true copy from the minutes recorded. October 17th, 1866.
DAVID L. ROUTH, *D. C.*

153 In Richmond superior court, October term, 1866.

The bill of William A. Beall and Jeremiah Beall, as complainants, against John Garsed, George Schley, and Thomas S. Metcalf, as defendants, having been dismissed in vacation by complainants as to all relief and discovery sought by them, it is ordered, on motion of counsel for the defendant, John Garsed, that the said bill, with all the parties as made by it, be retained and do proceed, for the purpose of adjudicating the relief sought by the answer of John Garsed against the said complainants and the defendant Metcalf.

154 EXHIBIT A.

WILLIAM A. BEALL & JEREMIAH BEALL *vs.* JOHN GARSED. } Rule nisi & amended motion.

Counsel on both sides agreeing thereto, it is ordered that his honor William M. Reese, the judge presiding, on the above motion, be, and is hereby, authorised to deliver his opinion on said rule nisi and amended motion in vacation, so that the same is filed with the clerk of the court by the 15th day of November, and that, when so filed, the same shall take effect as if delivered at this term, and be entered on the minutes of this court.

155 RICHMOND COUNTY:

I, Lafayette McLaws, clerk of the superior court of said county, hereby certify that the foregoing papers fastened together by eyelets & tape, containing 71¾ pages, contain correct copies of all process, pleadings, depositions, testimony, and all the proceedings in the suit pending in said court, on the equity side thereof, originally commenced at the instance of Wm. A. Beall and Jeremiah Beall as complainants, against John Garsed, George Schley, & Thomas S. Metcalf as defendants

Witness my hand and the seal of said superior court of Richmond County, Georgia, this thirteenth day of April, eighteen hundred and sixty-seven.

[SEAL SUPERIOR COURT.] LAFAYETTE McLAWS,
Clerk Supr. Court, R. C. Geo.

156 WILLIAM A. BEALL & JEREMIAH BEALL *vs.* JOHN GARSED, GEORGE SCHLEY, & THOMAS S. Metcalf. } Bill for injunction, &c., &c., in Richmond superior court, returned to April term, 1866.

The attempt to seize and remove the cotton under military orders by the defendants, as set forth in the above bill, having been abandoned, the complainants do hereby dismiss the bill.

September 24th, 1866. BENJAMIN H. HILL,
Sol. for Complainants.

CLERK'S OFFICE SUPERIOR COURT.

GEORGIA, *Richmond County:*

I, Lafayette McLaws, clerk of said court, do hereby certify that the foregoing is a true copy of the notice received by me from B. H. Hill,

sol. for complainants, directing that the bill for injunction, &c., in the case of Wm. A. & Jeremiah Beall vs. John Garsed, George Schley, and Thomas S. Metcalf, was dismissed; and I further certify that the portion commencing "the attempt," and ending "dismiss the bill," was entered on the court docket opposite the case.

Witness my hand and the seal of said court this 13th day of April, 1867.

[SEAL OF COURT.] LAFAYETTE McLAWS, *Clerk.*

157 *Order to transfer case from Richmond superior court to U. S. circuit court.*

UNITED STATES OF AMERICA:

Fifth circuit court for the southern district of Georgia.

IN THE CASE OF WILLIAM A. BEALL & Jeremiah Beall *vs.* JOHN GARSED, GEORGE SCHLEY, & Thomas S. Metcalf. } Bill for relief and injunction in the superior court of Richmond County, State of Georgia, returned to October term, 1865.

Which case was ordered to be dismissed by written order from counsel of complainants to the clerk of said superior court, but afterwards, by order of the judge of said superior court, at the October term, 1866, was retained for a hearing of the equities set up by the defendant, John Garsed, in his answer against the said complainants and the said Metcalf.

The said Garsed having at the present session of this court, and on the first day thereof, filed in this court copies of all the pleadings, depositions, orders, and proceedings had in the said superior court in said case; the said copies being certified by the clerk of said superior court under the seal of said superior court; and the said Garsed having also, on this the said first day of term, moved that said case,

158 with all the copies aforesaid of pleadings, depositions, orders, and proceedings, be entered in this court, in furtherance of an act of the Congress of the United States, approved 27th of July, 1866, entitled "An act for the removal of causes in certain cases from State courts," and an additional act amendatory thereof, approved March 2nd, 1867; and that said case be put on the docket of this court to take its course according to law, it is—

Ordered, that the said motion be allowed on the part of the said Garsed, reserving to the said William A. Beall, Jeremiah Beall, and Thomas S. Metcalf the right to be heard at the next term of this court upon the objections which they have now filed against said motion, and that in the mean time the parties may demur, plead, and answer without prejudice to said objections, this reservation being agreed to by the parties now litigant. The parties to give notice of thirty days to the other parties litigant of all demurrers, pleading, and answers that may be filed, and that they have until the first day of the next term to file demurrers, pleas, or answers, with the previous notice of thirty days, to the opposite party.

LINTON STEPHENS,
Atty. for Garsed.
PETER W. ALEXANDER,
Atty. for Bealls & Metcalf

159 (Endorsed on order:) Garsed vs. Bealls & Metcalf. Order to transfer case from Richmond superior court to U. S. circuit court. Filed and entered April 15th, 1867. H. C. Holcombe, clk. Motion for removal, &c.

Objections to transfer.

UNITED STATES OF AMERICA:

Fifth circuit court for the southern district of Georgia.

JOHN GARSED *vs.* WILLIAM A. BEALL, JEREMIAH BEALL, & Thomas S. Metcalf.	Motion to transfer a cause in equity from the superior court of Richmond County.

And now, on the motion to enter the cause in this court, come William A. Beall, Jeremiah Beall, and Thomas S. Metcalf, and object, and say that this honorable court should not and cannot take jurisdiction of said pretended cause, or of any other cause between the said parties in the same or any other form.

1st. Because they say that there was no such action or suit, nor any action or suit pending between said parties, in the above or any other form, in the said superior court of Richmond County, at the time of said motion to transfer the same to this court.

2. Because if any issue or cause of action existed at any time
160 between said parties in said superior court of Richmond County, yet long before said motion by said John Garsed to transfer the same, the said issue or cause of action had been dismissed from said superior court of Richmond County, and the parties had departed from said court, and therefore no cause was depending therein to be transferred.

Wherefore said William A. Beall, Jeremiah Beall, and Thomas S. Metcalf pray that said cause be not entertained by this court, and that they be hence discharged with their reasonable costs without any other or further answer thereto.

PETER W. ALEXANDER,
Sol. for Objectors.

(Endorsed:) John Garsed vs. William A. Beall, Jeremiah Beall, and Thomas S. Metcalf. Objections to transfer. Filed April 15, 1867. H. C. Holcombe, clk. P. W. Alexander.

Order of court overruling objections to transfer.

WM. A. BEALL & JEREMIAH BEALL *vs.* JOHN GARSED, GEORGE SCHLEY, AND THOMAS S. Metcalf.	

Bill for relief and injunction, transferred from the superior court of Richmond County, State of Georgia.

On hearing the objections filed against the transfer of the case
161 which stands as above on the docket of this court, it is considered and decreed by the court that the said case was pending in the said superior court at the time when the application was made for its

transfer to this court, and that the objections to the transfer are overruled.

JOHN ERSKINE,
U. S. Dist. Judge, sitting at Circuit.

We, the counsel for Thomas S. Metcalf, Jeremiah Beall, and William A. Beall, except to the above decision, and pray the chancellor to note the same.

WM. T. GOULD,
BENJ. H. HILL.

Noted.
J. ERSKINE.

(Endorsed:) U. S. cir. court, so. dist. of Ga. Be'll & Beall v. Garsed, Schley, & Metcalf. In equity. Order of court overruling objections to removal. Filed and entered 9th Nov., 1867. Jas. McPherson, clerk.

Certified copy of order to remove from State courts.

At chambers, in equity, in Richmond supr. court. Petition to remove case to the fifth circuit court of U. S. for southern district of Geo.

JOHN GARSED
vs.
WILLIAM A. BEALL ET AL.

The above petition having been presented to the judge of this court on the 15th instant, at chambers, accompanied by bond and surety in
162 terms of the law of Congress in such cases made and provided, and the same having been considered and accepted, and with the consent of counsel of both parties, the case having been then, by order of said judge, removed to the fifth circuit court of the United States for the southern district of Georgia, and that an order should be taken on this day, (the fifteenth April,) and at the present term of this court, affirming what was then done, and, nunc pro tunc, removing said cause in a more formal manner, it is therefore ordered that was then ordered by the judge of this court be confirmed, that the prayer of the petitioner be granted, and this court proceed no further in said cause. And for abundance of caution, the said order be considered as granted on this day in open court. Now, for then, that this order be placed on the minutes of this court, and a certified copy of the same be transmitted to said circuit court of the United States, as evidence that said cause properly, and by consent of parties, has been removed into said circuit court of the United States; and that the costs in this case be paid by John Garsed.

CLERK'S OFFICE, SUPERIOR COURT.

GEORGIA, *Richmond County:*

I, Lafayette McLaws, clerk of said court, do hereby certify that the foregoing is a true copy of the original order, recorded in the book of minutes of said supr. court, folios 215 & 216.

Witness my official signature and the seal of said court this 15th day of April, 1867.

[SEAL.] LAFAYETTE McLAWS, *Clerk.*

163 (Foregoing certified copy of order, &c., endorsed as follows:) U. S. cir. court, so. dist. of Georgia. In equity. W. A. Beall and Jeremiah Beall, compts., and John Garsed et al., defts. Certified copy of order to remove from State court. Filed April 16th, 1867. H. C. Holcombe, clk.

Demurrer of the Bealls.

NOTE.—This paper is lost from the record on file in this office.

164 *Order of court for hearing on the Bealls' demurrer, &c.*

In the matter of the proceeding between William A. Beall & Jeremiah Be'll, and John Garsed and Thomas S. Metcalf, transferred to this court from the superior court of Richmond County.

By consent of counsel for both parties, it is ordered that the argument on a demurrer filed by the counsel of William A. Beall and Jeremiah Beall be postponed until the next term of this court, and that the said William A. & Jeremiah and Thomas S. Metcalf have leave, if they desire, to file further grounds of demurrer, on giving notice to the counsel for the said John Garsed thirty days before the first day of the next term. It is further ordered that the said William A., Jeremiah, and Thomas S. have until the first day of the next term in which to file such answers as they may have the right to file in said case, and that the filing of such answers shall not prejudice any right to demur, which the parties have reserved. And in case the demurrer be overruled, the case shall be in order for a hearing & trial at the next term, either party in the mean time having permission to take testimony as if the case were at issue.

JOHN ERSKINE,
U. S. Judge.

Assented to 9 Nov., 1867.

165 (Foregoing order endorsed as follows:) U. S. cir. court, so. dist. of Ga. Beall & Beall vs. Garsed, Schley, et al. In equity. Order of court. Filed & entered 9th Nov., 1867. Jas. McPherson, clerk.

Copy demurrer of Thomas S. Metcalf.

In the fifth circuit court of the United States for the southern district of Georgia. April term, 1868.

JOHN GARSED
vs.
WILLIAM A. BEALL, JEREMIAH BEALL, & Thomas S. Metcalf. } Answer by way of cross-bill.

The demurrer of Thomas S. Metcalf, one of the above defendants, to the complaint of said John Garsed, as contained in his said cross-bill.

This defendant, by protestation, not confessing all or any of the matters and things in the said answer or cross-bill of said John Garsed contained to be true, as therein set forth, does, for himself alone, demur to the said answer as a cross-bill, and for cause of demurrer shows that no such case is made on the record of this proceeding as entitles said John Garsed to any discovery from this defendant or to any relief against him; for that it appears on said record that the original
166 bill of complaint of said William A. Beall and Jeremiah Beall, in which this defendant was a co-defendant with said John Garsed nd George Schley, and to which this defendant had made full answer

in the superior court of Richmond County, was dismissed by the complainants therein before any motion was made to transfer said cause to this court, and before the passage of any law, notwithstanding such transfer. And so this defendant, at the time of such transfer, was no longer a party to said bill, and cannot now be required to answer said John Garsed in the premises.

And for further cause of demurrer, said Thomas S. Metcalf shows that said John Garsed has not, by his said answer or cross-bill, made a case which entitles him to any relief or decree against this defendant; for that, by his own showing, he is seeking to enforce a contract alleged to have been made by this defendant, for himself and William A. Beall and Jeremiah Beall, which, on the face of it, as set forth, was void, and would not be enforced by law, inasmuch as it is alleged to have been a contract for the sale of goods, wares, and merchandize of the value of more than fifty dollars, and no part thereof was accepted by the alleged purchaser, nor was there any payment of earnest, nor any writing containing the alleged promise signed by this defendant or by any person by him lawfully authorized.

167 Wherefore, and for divers other good causes of demurrer appearing in said answer or cross-bill, this defendant demurs thereto, and prays the judgment of this honorable court whether he shall be required to make further answer to said cross-bill of said John Garsed, and moreover prays to be hence dismissed with his costs in this behalf sustained.

WM. T. GOULD,
Solicitor for Defendant, Thomas S. Metcalf.

(Endorsed:) 5th circuit court U. S., so. dist. of Geo'a. April T., 1868. John Garsed vs. T. S. Metcalf et al. Cross-bill. Copy demurrer of T. S. Metcalf. April t., 1868. Gould.

Order extending time for filing demurrers, &c.

In the fifth circuit court of the United States for the southern district of Georgia. April term, 1868.

In the matter between John Garsed & William A. Beall, Jeremiah Beall, & Thomas S. Metcalf.

By consent of parties, it is ordered that the rule taken at the last term, in regard to filing demurrers & answers at this term, be enlarged, and that the cause be continued, and stand at the next term, on the
168 same footing as the above-stated rule places it for this term.

JOHN ERSKINE,
U. S. Judge.

14 APRIL, 1868.

(Endorsed:) W. A. Beall et al. vs. John Garsed et al. In equity. Order. April 14, 1868. Jas. McPherson, clerk.

Order overruling demurrer.

JOHN GARSED
vs.
WM. A. BEALL, JERH. BEALL, & THOS. METCALF. } Demurrer of the Bealls and also of Thomas S. Metcalf.

Upon full argument and hearing the above-stated demurrers, it is

ordered by the court that the same be, and are hereby, overruled. Be it so.

JOHN ERSKINE,
U. S. Judge, Georgia.

14 Nov., 1868.

And the defendants, Wm. A. Beall & Jeremiah Beall and Thomas S. Metcalf, by their counsel, except to the above decision, and ask the court to note the exception.

J. E.

(Endorsed:) John Garsed vs. Wm. A. Beall, Jer. Beall, & T. S. Metcalf. Order overruling demurrers. Filed Nov. 14, 1868. Jas. McPherson, clerk.

169 *Consent order, setting down for hearing Nov.* 30, 1868.

WM. A. BEALL & JEREMIAH BEALL
vs.
JOHN GARSED, GEORGE SCHLEY, & THOMAS S. Metcalf.
} Transferred from Richmond superior court.

By consent of parties, it is ordered that the above cause be set down for final trial on Monday, the 30th of November, instant, and that either party be allowed to introduce testimony by witnesses in open court, and that exceptions to the form of the return of interrogatories on both sides be waived.

ALEXANDER H. STEPHENS,
Counsellor for Garsed.
WM. T. GOULD,
For Metcalf.

B. H. Hill, atty. for Bealls, agrees to this, on condition that he is able to get to the court.

JOHN ERSKINE,
U. S. Judge.

14 Nov., 1868.

(Endorsed:) W. A. Beall & Jeremiah Beall vs. John Garsed, George Schley, & Thomas S. Metcalf. Consent order, setting down for hearing Nov. 30, 1868. Filed Nov. 14, 1868. Jas. McPherson, clerk.

170 *Agreement of counsel as to Exhibit D.*

In the circuit court of United States for the southern district of Georgia.

WILLIAM A. BEALL AND JEREMIAH BEALL
vs.
JOHN GARSED, GEORGE SCHLEY, AND THOMAS S. Metcalf.
} Transferred from Richmond superior court, as retained upon answer of John Garsed.

It is hereby agreed, by and between the parties to this suit, that the paper described as Exhibit D, in the amended answer of John Garsed, and annexed to the answer of George Schley as Exhibit D D, may and shall be treated and taken as duly annexed and attached to the said amended answer of John Garsed, and be taken as part thereof, as if

fully set forth therein and annexed thereto; and that this agreement be filed and taken as part of the record in this cause.

B. H. HILL,
Atty. for Bealls.
LINTON STEPHENS,
Sol. for Garsed.
WM. T. GOULD,
For T. S Metcalf.

JOHN ERSKINE.

(Endorsed:) W. A. Beall & Jeremiah Beall vs. John Garsed, George Schley, & T. S. Metcalf. Agreement of counsel as to Exhibit D. Filed Nov. 16, 1868. Jas. McPherson, clerk.

171 *Agreement to argue May 6th, 1869, and consent.*

5th circuit court U. S., southern dist. of Georgia, April, 1869.

In the matter between John Garsed, and Thomas S. Metcalf, & William A. & Jeremiah Beall, it is agreed by the counsel that the cause comes on for trial on Thursday, the 6th of May, 1869. This 18th March, 1869.

LINTON STEPHENS,
Counsel for Garsed.
WM. T. GOULD,
Counsel for Metcalf.
B. H. HILL,
Atty. for W. A. & J. Beall.

Be it so.
Mar. 19, 1869.

JOHN ERSKINE,
U. S. Judge.

(Endorsed:) U. S. circuit court, so. dist. of Ga. In equity. Beall & Beall, complts., and Garsed *Garsed* & Schley et al., dfts. Agreement to argue May 6th, 1869, and consent. Filed March 22, 1869. Jas. McPherson, clerk.

Consent-order to take testimony before J. P Carr.

WILLIAM A. BEALL & JEREMIAH BEALL
vs.
JOHN GARSED, GEORGE SCHLEY, & THOMAS S. Metcalf.
} Bill for relief and injunction.

172 Upon consent of parties, ordered that Joseph P. Carr be, and he is hereby, appointed examiner to swear witnesses and take testimony in the above-stated case, and return the same into court, to be used upon the trial of said cause. Be it so.

JOHN ERSKINE,
U. S. Judge.
JOHNSON & MONTGOMERY,
Attys. for John Garsed.
WM. T. GOULD,
Sol. for T. S. Metcalf.

(Endorsed:) U. S. cir. court, so. dist. of Georgia. William A. Beall et al., comp'ts, and John Garsed et al., defendants. Consent order to take testimony before J. P. Carr. Filed May 5, 1869. Jas. McPherson, clerk.

Order to print the testimony.

5th circuit court U. S., southern dist. of Georgia.

In the matter of John Garsed & Thomas S. Metcalf, Jeremiah Beall, & Wm. A. Beall.

It is agreed that Joseph P. Carr, examiner of witnesses in the above case, retain the depositions made, and have them printed at the mutual expense of the parties before returning them to the court. May 14, 1869.

LINTON STEPHENS, *for Garsed.*
B. H. HILL, *Atty. for Bealls.*
W. T. GOULD, *for Metcalf.*

173 Be it so.

JOHN ERSKINE,
U. S. Judge.

MAY 14, 1869.

(Endorsed:) U. S. cir. court, so. dist. of Geo. In equity. W. A. Beall, complts., and John Garsed, Geo. Schley, and T. S. Metcalf, dfts. Order to print the testimony. Filed May 14, 1869. Jas. McPherson, clerk.

Motion to continue.

In the fifth circuit court of the United States for the southern district of Georgia. In equity.

JOHN GARSED
vs.
THOMAS S. METCALF, WILLIAM A. BEALL, and Jeremiah Beall.
} Transferred from the superior court of Richmond County.

The defendants in the above cause, through their counsel, represent:

1. That they have been unable to complete the taking of the testimony for the defendants in this cause; that they have divers important witnesses, whose presence they have been utterly unable to procure up to this date, but whose presence or testimony will be able to procure and expect to procure; that the testimony of several of these witnesses was not deemed material, necessary, or important until the exam-

174 inations before the examiner of John Garsed, the complainant, and of Charles H. Grosvenor, of Ohio, and of one Strinchcourt, of Ohio, the first two of whom are charged in the pleadings as conspirators in this case, and who, defendants now believe and represent, have purposely kept back the statements they now disclose for the purpose, in the last resort, of preventing the defendants from having an opportunity of contradicting their statements.

2. Defendants desire further the testimony of Thomas H. Metcalf, of Augusta, Georgia, by whom they will prove that all the statements of Charles H. Grosvenor and Strirchcourt, as to the confessions and admissions by said Metcalf that he had sold the cotton in controversy, or

had authorized George Schley to sell it, or had acknowledged in presence of said Grosvenor that he had authorized the writing of what is known as the Glasgow letter, are all utterly false and untrue, and that he, Metcalf, never made such admissions, nor any like them; that he never held such conversations with said Grosvenor as he has detailed in his testimony before the examiner; that he never even conversed with said Grosvenor on the subject of said cotton, or pretended sale, until he (said Metcalf) was called before him (Grosvenor) and informed that he (Grosvenor) had decided that Garsed was entitled to the cotton.

And by which defendants propose to discredit said Grosvenor,
175 and show that he is utterly unworthy of belief in anything stated by him, as also to discredit in like manner said Strirchcourt. Defendants will also prove by said Metcalf that he did not agree in writing voluntarily to abide the order of said Grosvenor, but that he was required to sign said agreement with that condition in it as an indispensable requisition to secure his discharge from arrest.

3. Defendants also expect further to prove by Hon. Joshua Hill, a citizen of Morgan County, in said State, that the agreement to abide the order of said Grosvenor was exacted and was not voluntary, and such information was communicated to one of the counsel of defendants by said Hill, as also to said Metcalf.

4. That defendants expect to prove by one Mr. Church, a citizen of New York City, that no such charges of bribery as pretended in the correspondence between James B. Steedman and Charles H. Grosvenor, now filed in the War Department at Washington, or were referred by the War Department to said Steedman, but that all such statements were false pretences and became material under the pleadings in this cause charging a conspiracy between complainant and said Grosvenor to extort money from these defendants.

5. That defendants expect to prove by Edward Willis, of
176 Charleston, South Carolina, that the correspondence was placed in his hands by the said Garsed, to be used by him in connection with others to intimidate and alarm defendants into paying money under the name of a compromise or settlement, and that he was to receive large compensation therefor, with intent to disprove the statements of said Garsed before the examiner, and thereby to discredit said Garsed as unworthy of belief in any of his evidence in his own behalf.

6. That defendants expect to prove by one Glenn, a citizen of Atlanta, in said State of Georgia, that said Grosvenor suggested to him (Glenn) that said Metcalf ought to compromise with Garsed, and which suggestion was conveyed to said Metcalf by said Glenn, thereby showing that the denial of said Grosvenor on this subject is untrue, and that he voluntarily converted his own suggestion of a compromise into a charge of bribery, to enable him to get possession of the defendant and force him to submit to his (Grosvenor's) order, who was, as charged then, a conspirator with said Garsed to seize and appropriate the cotton, and also to discredit said Grosvenor as a witness in this cause.

7. That defendants also expect to prove by Youel G. Rust, of Dougherty County, and others who had charge, as warehousemen, of the cotton in question, that the same was bought by and stored in the name and controlled solely by Jeremiah Beall, and that the price of the
177 cotton, when stored, had not advanced in price between the time of the pretended purchase and the time of the delivery claimed by the said John Garsed; and that, therefore, the statement by the said John Garsed, as a witness in his own behalf, that the cotton had so advanced is not true, and the witness himself is not entitled to credit.

8. Since the disclosure of the testimony of said Charles H. Grosvenor, John Garsed and one Stinchcomb, defendants have used even diligent effort to procure their testimony so as to go on now with the taking of the testimony before the examiner, and have been unable to procure the attendance of said Thomas S. Metcalf, because of serious illness of his wife, as shown by the certificate of his attending physician, herewith submitted, and which illness is so serious and dangerous as renders the said Metcalf unable to attend or to give his testimony.

That said Joshua Hill says that he cannot attend at this term of the court, and refuses to attend; that said Glenn is in the State of Tennessee, and unable to get here; and that said Church resides in New York, and his testimony cannot now be procured. So that, though since Monday morning last defendants have freely used the telegraph and railroad, and at great expense, they are unable to procure the attendance of any of the witnesses named except Mr. Willis.

178 9. Defendants further represent that in agreeing, through their counsel, to set a day for the hearing of this cause, they did so only as a convenience to the counsel and parties engaged; and at the instance of counsel for complainant, and with no intent to waive any necessary or usual pleading or other right, but with intent to speed the trial and accommodate the parties, counsel, and witnesses, they agreed to take testimony in advance of the setting down of the case with issue made up, but with no idea of being forced or of being attempted to be forced into a trial until the taking of the testimony was complete. That in making all their consent defendants had no suspicion of the testimony now developed by said Garsed and Grosvenor, and with no suspicion that they contemplated a surprise on the defendants with a view of forcing a trial after their testimony was delivered, and with no opportunity to contradict. They now believe that such is and was the purpose of said witnesses, who are charged in the pleadings as being conspirators with said Garsed in this case.

10. Defendants are not able now to state the precise language of the absent witnesses, nor all they will testify, but they make known to the court that they will disprove the statements and utterly discredit

179 the whole testimony of said John Garsed, Charles H. Grosvenor, and Stinchcomb, and that they ask time to take the testimony, not for delay but for the purpose of enabling them to get the testimony, but expect to procure the same by the next term, and now move the continuance of the court for the term.

B. H. HILL,
Atty. for Bealls.
WM. T. GOULD,
Solr. for Metcalf.

STATE OF GEORGIA,
Richmond County:

In person, came William A. Beall and Thomas S. Metcalf, and being sworn, depose and say the statements in the foregoing representation and motion, as far as the same depends on their own knowledge, *is* true, and, as far as they depend on the information from others, they believe them to be true.

THOS. S. METCALF.
W. A. BEALL.

Sworn to and subscribed before me, this 13 day of May, 1869.
[SEAL.] JACOB R. DAVIS,
U. S. Comr.

(Endorsed:) U. S. cir. court so. dist. of Georgia. In equity. John Garsed vs. Thomas S. Metcalf, Jeremiah Beall & William A. Beall. Motion to continue. Filed May 14th, 1869. Jas. McPherson, clerk.

180 *Separate answer of Wm. A. Beall.*

In the fifth circuit court of the United States for the southern district of Georgia. In equity.

JOHN GARSED
vs.
THOMAS S. METCALF, WILLIAM A. BEALL, AND Jeremiah Beall.
} Transferred from the superior court of Richmond County.

This defendant, by protestation to, answers the allegations, charges, and statements of said John Garsed, now complainant, as far as he is advised it is material or necessary for him to answer, and answering, says:

1. All the cotton mentioned as composing the nine thousand seven hundred and seventy-eight bales, except that stored at the town of Americus, was bought by the defendant, Jeremiah Beall, in his own name, but under an arrangement between said Jeremiah, Thomas S., and this defendant, that said Jeremiah should buy, store, and control and dispose of the cotton in his own name, as if sole owner; that said William A. Beall (or then Doughty, Beall & Co.,) should negotiate loans for all the money needed, except what said Jeremiah might advance, and that said Thomas S. should give credit to the paper of said Doughty, Beall & Co., or discount their notes, and that as the said Jeremiah should see proper to sell the cotton, he should apply the
181 proceeds of the sales to the extinguishment of the debts, and the profits should be divided equally between the parties. Before the twenty-eighth day of June, eighteen hundred and sixty-five, Mr. Doughty sold out his interest to this defendant (or to this defendant and Metcalf) and also before said date said Jeremiah had sold a sufficiency of cotton to pay off and did pay off all the loans contracted for the purchase, except the advances made by said Jeremiah, and a few small debts, amounting in all to about two hundred thousand dollars, or some such sum. The interests of said Thomas S. and of this defendant were only silent interests in the accounts to be rendered on final settlement, the said Jeremiah having the sole right and power of purchase, preservation, and disposition of the cotton in his individual name and as sole owner.

2. And, answering the statements and charges of said Garsed, that he purchased said cotton of George Schley, as the agent or broker of these defendants, on the said twenty-eighth day of June, eighteen hundred and sixty-five, this defendant answering, utterly denies the truth of all such statements. Said Schley was not the agent or broker of said Thomas S. Metcalf, nor of this defendant, nor of said Jeremiah, nor was the said Metcalf himself authorized to sell said cotton, or any portion thereof, nor to employ or appoint a broker or agent for such sale,
182 nor was this defendant so authorized. All the statements and charges of said complainant to the intent or effect that said Schley was such an agent or broker, or acted as such with the knowledge or consent of either of the defendants, are utterly untrue and without foundation in fact.

3. And, further answering the statements and charges on this sub-

ject, this defendant admits that said Thomas S. may have furnished to said Schley or to said Garsed a memorandum, solely with intent to inform them or either of them of the existence of said cotton, and that said Metcalf was of opinion it could be bought at twenty cents, estimating the bales at five hundred pounds as it stood, and delivered where stored, if a buyer had the cash to pay down, and would go and see the owner and purchaser of the cotton, meaning the said Jeremiah Beall. This, and this only, did the said Thomas S., and with the knowledge of this defendant, but even this was done without the knowledge of said Jeremiah Beall.

4. This defendant most emphatically denies that said Schley ever sold, or offered to sell, or gave time for acceptance of said cotton to said John Garsed, in his character as agent or broker of the defendants, or of either of them, or was in the remotest degree authorized so to do. He denies most positively that said Schley was a broker, and this de-
183 'dant does not believe he assumed to deal in any such character with said John Garsed. It may be true that after receiving the memorandum mentioned, the said Schley concluded he might be able to get control of the cotton on the terms therein suggested, and that he might safely take the risk, with the chance of a profit, of selling or agreeing to sell the cotton to said John Garsed for his, the said Schley's, own benefit, and as his own contract at twenty-three cents per pound, at now or then existing weights, and said Garsed (if he contracted at all) contracted with said Schley on said terms and only for Schley's own benefit, as his own contract, and not as agent or broker of either of these defendants or any other person.

5. After this arrangement between the said Schley and the said Garsed, and the giving the said Garsed until the sixth day of July to answer, he, the said Schley, doubtless with intent to get control of the cotton and make his profits sure, informed said Metcalf that he felt authorized by him (Metcalf) to give said Garsed until the sixth day of July to say whether he would be willing to buy the cotton on the terms suggested as possible or probable in the memorandum. But said
184 Schley was immediately informed by said Metcalf that he had no such authority, and said Schley confessed he had none, and so informed Garsed by telegram of the first day of July, the method of communication agreed on by said Schley and Garsed before their final separation in Augusta.

6. And, answering the statements and charges of said complainant that he was purchasing cotton for himself, this defendant denies the truth of such statements and charges, and says he was representing the firm of R. Garsed & Brother, composed of Richard Garsed and John Garsed, whose office was at number one hundred and nine Chestnut street, Philadelphia, and that if he was willing to buy or did buy or sought to buy from said Schley the cotton in question, he did so with full knowledge that said Schley did not own or possess the cotton, and had not communicated with the owner and purchaser of the cotton alluded to in the memorandum referred to, and with full knowledge by both said Schley and Garsed that said Metcalf was not the owner and purchaser alluded to, and therefore had no authority to sell, or give time, and that if he purchased or agreed to purchase he did so with the distinct knowledge that such agreement must go for nothing if said Schley should fail to make terms with the true owner and purchaser alluded to. And, further answering, this defendant, answering, says that such contact of purchase
185 was not for said John Garsed, but if made or sought to be made or pretended to be made, it was for the benefit of R. Garsed & Brother,

composed as aforesaid, and of Robert Patterson & Co., of the city of Philadelphia, which firm is composed of Robert Patterson.

7. And, answering the statement and charge of said John Garsed that the telegram from said George Schley, notifying him of his mistake, to said John Garsed, forwarded from Augusta on the first day of July, did not reach Philadelphia or was not received until the seventh day of July, this defendant, answering, denies utterly the truth of said pretence by said John Garsed, and charges that said statement by said John Garsed is adroitly worded, and with intent falsely to impress one that said telegram was not received at the office of said R. Garsed & Brother until the seventh day of July. This defendant, on the contrary, is informed, believes, and answers, that said telegram did arrive in Philadelphia, and was received at the office of R. Garsed & Brother, at one hundred and nine Chestnut street, in said city, where said John directed said Schley to forward it, in advance of the arrival of the said John himself, and was there read and kept for said John, and delivered to him on his arrival opened, and as one of the papers received at the office during his absence down South;
186 and this defendant, answering, says the attempt of the said John Garsed to conceal and evade this fact is proof of desperate untruthfulness in an effort to get money under false pretences.

8. And, further answering, this defendant says that as soon as he and the said Metcalf were informed that said Schley had received the pretended telegram of acceptance of the sixth of July, they again and immediately caused said Schley to inform said John Garsed that no such sale had been made, and that the cotton could not be had except with the cash paid on the day of sale, but that if Garsed had the money here, or would bring it, it was their opinion still the cotton could be bought. This telegram was also received by said John before his departure from Philadelphia, and is known as the telegram of the 8th of July.

9. And, answering the statements of said complainant that he raised the money for this cotton on the faith of said pretended contract, and paid interest on the same, this defendant, answering, utterly denies the truth of said statement, and says that he is informed, believes, and answers, that said John Garsed raised no money whatever on the faith of said pretended contract. He did not send the money by next steamer or vessel, as pretended, and falsely pretended, in said telegram of the
187 sixth of July, nor did he bring the money himself the next Wednesday, as also falsely pretended in said telegram; that in fact said Garsed did not raise any money, but said Patterson & Co. may have raised ten thousand dollars in gold and ten thousand in currency, (or greenbacks,) and sent this sum by the said next vessel, or some vessel soon thereafter, but the sum so sent was not for the cotton now claimed, but was only a portion of the sums due in gold and greenbacks for the cotton actually bought by said John and Richard, and Robert Patterson, from the said George Schley and Thomas S., on their own account; and said John Garsed brought no money with him to pay for cotton when he did come; and so far from demanding the delivery of the cotton now sued for, on the 6th of July, or on the twelfth of July, or on the twenty-fifth day of July, or on any other day, and so far from being in a condition to demand it, said Garsed had no money whatever to pay for the same, and did not even pretend to have over one hundred thousand dollars in Augusta, and this was not forwarded here for this cotton, but for the Schley and Metcalf cotton; and if any money was left over after paying for their cotton, it was an ar-

ranged fraud and pretence gotten up between the said John Garsed and George Schley after the former's arrival, and which was ac-
188 complished by the said George Schley taking or pretending to accept drafts in lieu of money for a portion of the Schley and Metcalf cotton. These defendants distinctly answer that said Garsed has never offered to pay for said cotton, nor demanded the delivery of the cotton, nor has he ever had in Augusta money sufficient to pay for one-tenth of the cotton. The pretence that he failed to bring it because of the refusal of defendants to receive the money is false, because he did receive the telegram of the eighth of July before he left Philadelphia, distinctly notifying that, in the opinion of said Metcalf and this defendant, *that* the cotton could still be bought, (even after the sixth of July,) if he would bring out the cash, as suggested in the original memorandum. This defendant says that all the statements and pretences of Garsed of raising money to pay and being ready to pay for said cotton are utterly false and untrue, and he has never paid nor offered to pay, nor demanded to pay, one dollar for their cotton, nor has he ever demanded the delivery of the cotton with an offer or expression of willingness or readiness to pay, and all pretences to the contrary are false and untrue.

10. And, further answering, this defendant says that if said pretended contract was ever made, it was for goods exceeding the value of
189 fifty dollars, and was not in writing, nor was it signed by either of these defendants, nor by any person by them or either of them lawfully authorized; nor has any portion of the goods accepted by said John, nor was anything given in earnest to bind the bargain or in part payment; nor was said Schley lawfully authorized in writing to act for these defendants, or for either of them; nor was any person authorized to act for the owner and purchaser of said cotton, the said Jeremiah Beall; nor was anything done or pretended to be done by said Schley ever approved, satisfied, adopted, or accepted by the defendants, or by either of them; and said contract, even if made, created no legal obligation, as is enacted and provided by section nineteen hundred and forty and by section twenty-one hundred and fifty-six of the Code of Georgia, in which State said contract is pretended to have been made.

11. And, answering the statement and pretences of said Garsed that by the sixth day of July cotton had advanced so that he could have made five cents per pound on the purchase, this defendant, answering, says this statement is false, and that in Southwest Georgia, where this cotton was stored, and only could be delivered, cotton had not advanced
190 and did not even begin to advance until about or after the fifteenth of July. And defendant denies there was any advance in value between the pretended day of buying and the pretended day of delivery, and denies that said Garsed was ever damaged one cent by reason of any pretended breach of said pretended contract.

12. And, answering touching the cotton at Americus, this defendant, answering, says that said cotton was purchased by Timothy Murlow and others for and at the instance and in the name of this defendant, and was stored in the name of this defendant, and could be sold only this defendant, though said Thomas S. Metcalf had a silent interest of one-half the profits. All the statements in this answer touching agency, brokerage, sale, delivery, payment, demand, interest, and damages apply also to this cotton, and all the statements and charges of said John Garsed, as to his pretended purchase of said cotton from a broker or agent of this defendant, or from this defendant, or from said Metcalf as a broker or agent of this defendant, are false and untrue.

13. Touching the proceedings before the military authorities, this defendant is informed, believes, and answers, that, after the arrival of said Garsed in Augusta, in July, eighteen hundred and sixty-five, a conspiracy was formed between said John Garsed, George Schley, and Charles H. Grosvenor, and others, to forcibly seize and carry away said
191 cotton without payment of one dollar, and with intent to appropriate the same to their own use; that, in execution of this conspiracy, said Garsed set up this pretended contract before said Grosvenor, as provost-marshal-general; that it was proven only by the pretended testimony of George Schley; that it was condemned without even notice to defendants, by the pretended judgment and order of Grosvenor, and was being seized by the military force, to be carried away.

In order to prevent appeal from the decision of said Grosvenor, it was arranged and agreed that said Grosvenor should encourage one Leopold Cohn to offer a bribe to said Grosvenor to decide against his own coconspirator, the said John, and to represent that he was authorized by Thomas S. Metcalf to offer said bribe. That under said pretence said Metcalf was arrested and thrown into prison, and greatly alarmed for his liberty and life, and under the influence of said alarm was made to promise he would make no appeal from said decision, but would abide the order of said Grosvenor.

14. That when this conspiracy failed, by reason of the revocation of said Grosvenor' orders, by direction from the War Department of the United States, another conspiracy was formed between said Charles H. Grosvenor' and John Garsed and others, to extort money through fear from said Metcalf and these defendants. That in the execution
192 of this conspiracy a correspondence was gotten up between James B. Steedman, formerly commanding the department of George, and the said Charles H. Grosvenor. This correspondence recited that said Grosvenor had refiled charges of bribery against these defendants and Cohn (Metcalf, Bealls, and Cohn,) before the War Department, and that said Grosvenor would insist upon their arrest and trial by military commission at Washington City, but would withdraw the charges if these defendants, among other minor points, would carry out the agreement with Garsed, or satis*fied* said Garsed with a pretended compromise; which correspondence was placed in the hands of said Garsed, and by him brought or sent to Augusta, for the express purpose of being used, and was actually used, for the express purpose of extorting money or attempting to extort money from these defendants; when, as these defendants are informed, believe, and state, said charges were not refiled, nor entertained by the War Department, and it was well known, both to said Garsed and his coconspirator, Grosvenor, that the War Department would not listen to or permit such arrest and trial, but the correspondence was gotten up for the distinct purpose, and was used for the sole purpose, of extorting money from these defendants.

15. Failing in this conspiracy to extort money, this defendant has been informed, believes, and so charges, that another conspiracy
193 has been formed by said John Garsed, Charles H. Grosvenor, and others who' defendant begs leave to mention, if necessary, hereafter, to secure by false and corrupt means and influences a judgment against these defendants. That, in the execution of this conspiracy, said John Garsed and Charles H. Grosvenor have become witnesses, and pretend to testify to various confessions pretended to have been made by said Thomas S. Metcalf to said Charles H. Grosvenor when no other person was present, touching the pretended sale of cotton, and

the agency and authority of said Schley, which pretended confessions were never made either to said Grosvenor or his clerk, Stinchcomb, but that said conspiracy may be effected, it was arranged that said pretended confessions should not be disclosed until it was too late to correct or dispute them. Said Garsed and Grosvenor and his clerk have not given their depositions, but attend from term to term of this court, in person, ready at the last moment to deliver their budget of falsehoods, and then press a trial, if possible, before witnesses can be examined to expose their wicked schemes and false evidence.

And having fully answered, and denying all and all manner of fraud, combination, or confederacy on the part of this defendant, he prays to be hence dismissed with his reasonable costs in this behalf unjustly sustained.

BENJ. H. HILL,
Solr. for Bealls.

194 GEORGIA, *Richmond County:*

In person came William Beall, and being duly sworn deposes and says the statements in the foregoing answer, as far as the same depend on his own knowledge, are true, and as far as they depend on the information of others he believes them to be true.

W. A. BEALL.

Sworn to and subscribed before me this 13th day of May, 1869.
[SEAL.] JACOB R. DAVIS,
U. S. Commissioner.

(Endorsed:) Fifth circuit court United States, for southern district of Georgia. John Garsed vs. Thomas S. Metcalf, William A. Beall, & Jeremiah Beall. Answer of Wm. A. Beall. Filed May 14, 1869. Jas. McPherson, clerk. B. H. Hill.

Separate answer of Jeremiah Beall.

In the fifth circuit court of the United States for the southern district of Georgia. In equity.

JOHN GARSED
vs.
JEREMIAH BEALL, WILLIAM A. BEALL, & Thomas S. Metcalf.
} Transferred from the superior court of Richmond County.

195 The separate answer of Jeremiah Beall to the case made or charged by said John Garsed.

The defendant, Jeremiah Beall, by way of answer to statements and charges made by said John Garsed, as far as he is advised it is necessary or material for him to answer, answering, saith:

This defendant had the entire, sole, and only possession and control of all the cotton mentioned except that stored at Americus, and had the sole and exclusive authority to sell or dispose of the same. He was liable to account to said Thomas S. Metcalf and William A. Beall for their interests in the proceeds of any sale or disposition of the cotton made by this defendant, and they were entitled to two-thirds of the profits after deducting all advances made by this defendant and expenses incurred by him, which he says amounted to about the sum of

two hundred thousand dollars, or some such large sum. The cotton was all bought, stored, and controlled and possessed by and in the name of this defendant, said Metcalf, and William A. Beall having only a silent interest in the profits, and no right to have, possess, control, or sell or dispose of the same or any portion thereof whatsoever.

This defendant denies most positively that either said Metcalf
196 or William A. Beall, or George Schley had any authority from this defendant to sell or dispose of said cotton or any portion of it to said John Garsed, or any other person, in my capacity as agent or broker, or otherwise, nor did this defendant have any knowledge of the pretended negotiations recited by said Garsed, nor has he ever ratified or approved the same in whole or in part.

This defendant does not believe that said Metcalf or William A. Beall ever authorized said Schley to make such sale or offer to sell, as agent, broker, or otherwise. He believes that it may be true that said Metcalf informed said Schley of the existence of this cotton, or cotton that might be bought for cash from this defendant, and nothing further. He denies that said Schley ever made a sale or offer of sale to said Garsed as agent or broker of either of the defendants. If he made a sale it was for his own benefit and as his own contract. He denies that said Schley ever had authority in writing to make such sale, or did make such sale, in writing, as the agent or broker of these defendants or either of them. He denies that said Schley was a broker. He denies that said Garsed ever bought said cotton or contracted to buy it. And that if he did it was not for himself but for R. Garsed & Brother, and for Robert Patterson & Co., who have not complained of any
197 breach of contract or claimed damages therefor.

He denies that said John Garsed, or Richard Garsed & Brother, or Robert Patterson & Co., have ever paid or offered to pay any money to either of these defendants, or any agent for them, and denies that either of them ever raised money thereon or relied on said pretended contract, or suffered damages, or ever demanded the delivery of the cotton, or any portion of it.

And having fully answered, prays to be hence dismissed with his reasonable costs, so unjustly sustained.

BENJ. H. HILL,
Sol. for J. & W. A. Beall.

STATE OF GEORGIA,
County of Chatham:

In person came Jeremiah Beall, and, being sworn, saith, the statements of the foregoing answer, as far as the same relate to his own act or deed, are true of his own knowledge, and as far as they relate to the act and deeds of others he believes them to be true.

J. BEALL.

Subscribed and sworn to before me May 11, 1869.

AMHERST W. STONE,
U. S. Commissioner.
[COM'R'S SEAL, SO. DIST. GA.]

(Endorsed:) Fifth circuit court of United States. In equity from Richmond court. John Garsed vs. Thomas S. Metcalf, Jeremiah Beall, & William A. Beall. Answer of Jeremiah Beall. Filed May 14, 1869. Jas. McPherson, clerk. B. H. Hill.

198 *Answer of Thomas S. Metcalf.*

In the fifth circuit court of the United States for the southern district of Georgia, November term, 1868.

IN THE SUIT IN EQUITY ORIGINALLY BETWEEN William A. Beall & Jeremiah Beall, complainants, *and* JOHN GARSED, GEORGE SCHLEY, & THOMAS S. Metcalf, defendants. } Transferred from Richmond superior court.

The answer of Thomas S. Metcalf, now defendant, to the original answer of John Garsed, who is made complainant by order of said superior court.

This defendant, by way of answer to so much of the obligations of said John Garsed in his said original answer contained as he is advised is material and necessary for him to answer, answering saith:

That all the allegations in the original and amended answer of said John Garsed, to the effect that the contract alleged to have been made by George Schley with said Garsed touching the cotton now in dispute was made by said Schley as agent of this defendant, are utterly untrue.

199 This defendant now believes that said Schley did make an offer to said Garsed, as set forth in said Garsed's answer, of the cotton in dispute at twenty-three cents per pound, the whole to be reweighed. But said Schley made that offer on his own responsibility alone, and without any authority from this defendant. Said Schley was not the agent of this defendant, and this defendant never made any such offer to him as is above set forth. This defendant did say to said Schley, and did give him a written memorandum to that effect, that the cotton could be bought that day at twenty cents per pound, nothing being said of reweighing it. This defendant never knew nor heard of the offer at twenty-three cents per pound, reweighed, till long after he had disavowed the offer of time to the sixth of July; which offer, when he disavowed it, he supposed referred to the price of twenty cents, without mentioning reweighing. This defendant never in any way, directly or indirectly, ratified the offer as made by said Schley to said Garsed, of the cotton at twenty-three cents, to be reweighed.

This defendant believes that George Schley, at the time alleged by said Garsed, may have sent to said Garsed the note or memorandum of which Exhibit A to said Garsed's original answer is a copy; yet this

200 defendant denies that said George Schley ever had any authority from him to make any offer to said Garsed of time to the sixth of July, or any other future day, to accept the cotton in question on the terms suggested by this defendant, much less on those offered by said Schley. This defendant never gave any such authority to said Schley, and was not authorized to give it by either of the parties in interest with him, neither of whom was his partner in business, but only interested in these particular cottons jointly with him.

This defendant further avers that no part of the purchase-money under the pretended contract for the sale of the cotton now in dispute, and no part of the money which was ordered to be paid by the military authorities, was ever paid or tendered, or in any way offered as a payment to this defendant, nor, so far as he knows or believes, to either of his associates in interest.

WM. T. GOULD,
Solr. for Deft.

STATE OF GEORGIA,
Richmond County:

Thomas S. Metcalf, being duly sworn, saith that what is contained in his foregoing answer, so far as relates to his own act and deed, is true of his own knowledge, and so far as relates to the act and deed
201 of any other person or persons, he believes it to be true.

THOS. S. METCALF.

Sworn to and subscribed before me November 25th, 1868.
[COMR. SEAL.] JACOB R. DAVIS,
U. S. Commissioner.

(Endorsed:) 5th U. S. circuit court, so. dist. of Georgia. November term, 1868. Removed from Richmond supr. court. John Garsed vs. Wm. A. Beall, Jeremiah Beall, & Thos. S. Metcalf. Answer of Thos. S. Metcalf to answer of Garsed. Filed May 14, 1869. Jas. McPherson, clerk. Gould.

202 UNITED STATES OF AMERICA,
Southern District of Georgia,
City of Savannah, State of Georgia, ss:

Be it remembered that on this fifth day of May, in the year of our Lord eighteen hundred and sixty-nine, I, Joseph P. Carr, an examiner duly appointed by the circuit court of the United States for the southern district of Georgia, did call, and cause to, and personally appear before me, at the Pulaski House, in the city of Savannah, in the said southern district of Georgia, in the State aforesaid, to testify and the truth to say in a certain suit or matter of controversy, no' depending and undetermined in the fifth circuit court of the United States for the southern district of Georgia, at Savannah, Georgia, wherein William A. Beall and Jeremiah Beall were original complainants, and John Garsed, George Schley, and Thomas S. Metcalf were original defendants, and wherein the said John Garsed is now complainant, and William A. Beall, Jeremiah Beall, and Thomas S. Metcalf are now defendants, the following witnesses, to wit:

First. ROBERT SCHLEY, who, having been by me first cautioned
203 and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

1. Witness was in Augusta, Georgia, on the twenty-eighth day of June, in the year eighteen hundred and sixty-five.

Question. Did you see a note from Mr. George Schley to Mr. John Garsed, touching some cotton, on the evening of that day?

(Question objected to.)

Answer. I saw the note. On the twenty-eighth, George Schley, my brother, requested me to take John Garsed around to the various sheds in the city and show him the cotton that was stored belonging to Metcalf and others, which I did, (show him the cotton.) Then we returned together to the office, and Mr. Garsed saw brother George Schley about the cotton. They (Mr. Garsed and George Schley) talked together for some time about the cotton. After they had the conversation about the cotton Mr. George Schley left the office, saying he would go to see Metcalf about the cotton. After about twenty-five minutes George Schley returned to the office and met Garsed there. Soon after Metcalf called and asked George Schley out of the office. George Schley and John

Garsed were then negotiating about the sale of the cotton in
204 Augusta belonging to Metcalf, as I supposed. I saw Metcalf and George Schley together again during the day. Metcalf called at the office three or four times and asked George Schley out, I being in the office at the time. During the day I saw William A. Beall and Metcalf together in conversation pending these negotiations. I met them on the street walking arm in arm. Metcalf would come to the office and talk with George Schley. Then I would afterwards see him (Metcalf) walking arm in arm with William A. Beall on the street. I saw this two or three times that day. In the afternoon I carried John Garsed out of town to my house. As we got into the buggy George Schley came up, and from their conversation I learned that they had traded for the cotton at George Schley's gin-house, De Laigle's farm, and at Phinizy's farm. George Schley said further to Garsed that he (Schley) would see the parties that controlled lot (No. 3) number three; that, by the time Garsed got to Philadelphia he (Schley) would telegraph him what they would do; that he had no doubt he could perfect the sale on the same terms as were offered. We then (Garsed and myself) left town and went to my residence at Belville factory, about
205 seven miles from the city. Late in the evening, after dark, George Schley's carriage-driver, Glasgow by name, brought a note to Garsed from George Schley. He handed the note to me. I handed it to Garsed, who read it and handed it back to me, and I read it. As nearly as I can recollect, the note read: "Dear Garsed: Since you left town I have seen the parties controlling," (either the large lot or lot number three, I cannot remember which,) "and you can have time to answer, upon the same terms as with the other lots." I understood from the conversation Garsed was to answer from Philadelphia, by telegraph, about the other lots.

(Exhibit A was here shown to witness.)

That is the identical note, according to my recollection. I cannot be sure about the words, but believe them to be the same.

(Exhibit A to the answer of Garsed is a correct copy of the note received that night by Glasgow.)

The next morning, June twenty-ninth, Garsed left my house to go to the depot, and I went with him. On the preceding night, after reading the note, I returned it to Garsed. Glasgow is dead. I know nothing farther, except that the note was in the handwriting of George Schley, and in pencil.

(Paper-writing marked with examiner's name was here shown to the witness, and he says:)

206 I saw that note exhibited to me by George Schley, in his office, after Garsed left. It is the same identically with the paper set out in Exhibit D to George Schley's answer. It is in the following words:

"Believed to be in very good order as a whole, 'C' lot, and to average 500 lbs. to the bale. They belong to, and were bought by, a large planter in Southwestern Geo., and can this day be bought for 20 c. a lb., greenbacks. They are mostly crop-lots entire, & therefore are desirable for spinners, as cottons in that section are long staple. There is very little doubt that they can be had at that price, a short time hence, if a buyer should come out with the cash, and go down and see him & the cotton."

207 After the controversy in this case before the military authorities had been settled, Garsed appointed me shipping-agent to put the cotton in order and ship it. I took charge of the cotton at

Eufaula, and put about one hundred bags in order for shipment. I bought the bagging and rope at Eufaula. Garsed gave me the money to buy the bagging and rope. I branded some thirty-odd bales "Garsed."

I saw at Albany, Georgia, in two warehouses, pretty large lots of cotton—quite large. I estimate five hundred bags in one warehouse. I did not count them; they were delivered to me. I saw cotton also at Eufaula at two warehouses; at a place on the railroad going to Eufaula, Dawson, and also at Cuthbert I saw cotton, and also at Americus. I had the warehouse-receipts for all this cotton; not the original, but a book containing copies of the original receipts, which George Schley and John Garsed delivered to me. George Schley stated it had been given him by Metcalf for Garsed.

At Dawson the cotton was in very bad condition. The shed leaked, and the cotton had been wet. The bagging was off in many cases, and the ropes burst. The cotton was generally good. It looked to me like "crop-lots" or "planters' lots."

208 With ordinary diligence I think it would have taken two months to put all the cotton at these various points in shipping order. To have merely reweighed and delivered it, without putting it in order, would have taken one month, in my judgement, if ordinary diligence was used. In the condition in which the country then was it would have been very difficult to have obtained transportation.

Cross-examined:

All the foregoing testimony, and each portion except the writing marked with examiner's name and the testimony touching same, is objected to by the counsel of Beall and others as irrelevant, immaterial, between third parties, and secondary. George Schley stated to him that the paper-writing exhibited above, and not objected, had been given to him by Metcalf, and that he, Metcalf, had not put his name to it; that it related to lot number three, (3.)

The method of communicating between George Schley and John Garsed, between Augusta and Philadelphia, was to have been by telegraph, so agreed by George Schley and John Garsed. I was stopped from putting the cotton in order at Eufaula by a telegram from

209 George Schley, stating that the military orders had been suspended by order from Washington City.

Rebuttal:

The only correspondance between George Schley and John Garsed by telegraph between Augusta and Philadelphia, as I understood it, was to be the answer of Garsed within a time limited, as stated above. At the office it was agreed, however, between George Schley and Garsed, that if Garsed did not hear from him that evening, he, Schley, would telegraph to him, Garsed, at Philadelphia about the third lot.

ROBERT SCHLEY.

210 *Testimony of Charles H. Grosvenor.*

CHARLES H. GROSVENOR, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

I am a lawyer by profession, practicing at Athens, in the State of Ohio I arrived at Augusta, Georgia, for the first time, between the twelfth and fifteenth days of July, eighteen hundred and sixty-five. I was as-

signed to duty as provost-marshal-general of the Department of Georgia, which had just then been created, General I. B. Steedman commanding. I know Thomas S. Metcalf. I became acquainted with him *with him* within twenty-four hours after I arrived in Augusta, very shortly after my arrival. I was assigned quarters in a house on McIntosh street, in a house belonging to Robert Campbell, between the offices of George Schley and Metcalf. About that time Metcalf called at my house, and I made his acquaintance in that way. He came frequently to see me; generally at least as often as once every day. Very
211 early in his visits there he asked what I thought would be the course of the Government towards the men of the South who had been actively engaged in the rebellion about their property, and asked if I thought there was any probability that confiscation would be insisted on. I answered that I knew nothing about that. He talked with me frequently about cotton, and told me he had bought large quantities of cotton during the latter years of the war. He at one time enquired if I would not like to take an interest with him in the cotton business. He told me the people in the country about there had become afraid to own or hold an interest in cotton, and that he had bought cotton as low as seven cents a pound in confederate money.

On one occation, prior to the twenty-sixth day of July—I cannot give the date more accurately—he told me he had been notified that he had received a pardon, or that a pardon had been granted to him. He had told me before this time that an application for pardon had been made for him. He told me at this time that his pardon had cost him a great deal of money; there was much rascality connected with the pardon business. He said then, if he had been certain from the first he would get a pardon, he would be worth on that day two hundred thou-
212 sand dollars more than he was. I asked him if his pardon cost him that amount of money. He said it did not, but that, having fears about his property, he had sold a large amount of cotton which he would otherwise have held. He referred to his sales of cotton in several conversations which took place about that time, and in those conversations he stated that George Schley was a man whom it would be well for me to watch in connection with cotton operations, and he then, for the first time, gave me a history of a cotton transaction, which I have known since as the "Fry affair."

He told me the cotton-sale to which he had referred in talking about his pardon, was to a man in Philadelphia, for whom he was looking on a small boat then running on the Savannah River. He did not tell me his name at the time. He said that he and Schley had sold to him over thirteen thousand bales of cotton; a part of it was the same cotton which Schley had saved for him at Augusta, and the balance was at other places, none of the names of which I remember, except Albany and Eufaula. He said that the cotton outside of Augusta was owned by himself and the Bealls, and he said that the money to pay for that cotton had been furnished by him, and they had picked up the
213 lots of cotton; that his partners, the Bealls, were dissatisfied with the sale he had made of the cotton, and he expected to have trouble about it, and he used precisely this language: "I thought, as my money had bought the cotton, I might use my own judgment about selling it."

In one of these conversations he told me that George Schley had an interest in the cotton at Augusta, and had advised him to sell, saying that he was satisfied with the price he was getting, and that he (Metcalf) had been influenced to some extent by Schley's advice, and was

now afread that Schley had gotten a commission on the large lot sufficient to compensate him for any loss on his interest in the Augusta cotton if it had been sold too low.

About this time I had been badly injured by a railroad accident, and was confined to my house on McIntosh street, in Augusta, for a number of days, and Mr. Metcalf came to see me very often, and frequently brought me wine & fruit, and other delicacies, such as we were not able to provide for ourselves; in short, he rendered me every possible service and attention during the time I was ill, and much of the history of this cotton transaction I got from him during these visits. On the
214 twenty-sixth day of July, eighteen hundred and sixty-five, I first saw John Garsed; he came to my quarters in Augusta some time in the afternoon of that day. I desire to mention that during the conversations with Mr. Metcalf to which I have heretofore referred he gave me a lengthy and detailed account of many other transactions relating to cotton-dealings and other matters relating to property in Augusta. He gave me an account of blockade-running transactions, the purchase of cotton by a company, known as the Chicora Company, and other blockade-running companies. He told me that a large amount of cotton in that neighborhood, claimed by Dennistown & Co., and probably other parties at Glasgow, Scotland, was in fact the property of the confederate government, and ought to be seized by the United States. He also intimated that the sequestration agent for the State of Georgia had been guilty of enormous frauds on both the United States and the Confederate States. Upon these suggestions of Metcalf, the agent, Dr. Daniell, was arrested and brought to Augusta under guard, to my quarters. He furthermore stated that a large amount of cotton, then claimed by George Schley, and which had been saved by him at the time of
215 the threatened burning of the cotton at Augusta, and which at this time had no marks upon it, was in fact confederate cotton, and Mr. Metcalf proposed that he could give us very valuable information to enable us to reach this contraband class of property if he could have any assurance that his own interest would thereby be protected.

On the afternoon when Mr. Garsed came to my quarters, in Augusta, he exhibited to me authority from the War and Treasury Departments at Washington to come to the South and purchase cotton for his manufacturing purposes, and he made a partial statement of the controversy between himself and Metcalf in regard to this cotton. I declined to have anything to do with it, and gave him my reason for it. Mr. Garsed went away from my house, down McIntosh street, past the office of Metcalf, and in a very few minutes Metcalf came in and stated to me that the man who had just passed there was Garsed, to whom he had sold his cotton, and asked what he wanted with me; I told him what Garsed wanted with me, and stated the substance of what Garsed claimed, and told him I had declined to have anything to do with it. Mr. Metcalf expressed a regret that I had taken that view of it, and said he would rather I would settle the controversy between
216 them, and stated that he stood in such a position between *between* Mr. Garsed and his partners in the cotton that he would prefer to have somebody else *else* settle what should be done. Some time in the next twenty-four hours, after a long talk with General Steedman, he directed me to investigate this case and dispose of it.

Thereupon, on some day prior to the second day of August, in the same year, I undertook the investigation.

Just before Garsed appeared in Augusta, probably on or about the twenty-second day of July, I went with General Steedman to Macon.

On my return from Macon the accident happened by which my shoulder was injured, and I was suffering from this injury when Garsed came to my house first. While at Macon at this time General Steedman had an interview in my presence with the provisional governor of Georgia, Johnson, and at that interview the subject of authorising the State courts of Georgia to proceed with business was discussed, and the governor's proclamation authorising the opening of the courts was not issued till several days after *after* our return to Augusta, and, I think, was not published till after the first of August. Prior to the issuing and publication of this proclamation there were no civil courts
217 or judges in Georgia assuming to transact any business other than the court of ordinary.

This dispute between these parties was heard before me, the provost-marshall-general of Georgia, there being at that time no court in Augusta to settle any dispute between private individuals. It was heard on several different days. Mr. Schley appeared (George Schley) and made his statement under oath, and exhibited certain papers, among which *which* is the paper referred to by Robert Schley, and marked with the examiner's name, and the note delivered to Mr. Garsed from George Schley, called the Glasgow letter; a certified copy of a telegraphic message sent by John Garsed to George Schley from Philadelphia; and a receipt for the payment of the tolls from the telegraphic operator at Philadelphia, or somewhare East—I will not be certain where. The paper, a copy of which is attached to the answer of George Schley, marked "Exhibit E," was produced at that examination, and, at a time when Mr. Metcalf was present, George Schley read that paper to Metcalf, held it up before his (Metcalf's) face, and asked him if he did not authorize him (Schley) to write that letter to Garsed. Metcalf said that he did, but at the same time told him that when he saw his partners or the parties interrested with him in the cotton—I cannot
218 say which term he used—they had refused to ratify the transaction, and he had so told Schley. This conversation was at one of the times when the parties where before me, between the twenty-sixth day of July and the third day of August. Mr. Metcalf came to my room or office constantly while this investigation was going on. He was never ordered to come there by an orderly or any other person by my direction, unless it was as a matter of accommodation to Mr. Metcalf to notify him when proceedings were being had.

The paper marked "Exhibit D D," attached to the answer of George Schley, and the cotton numbered three (3) were the same cotton in dispute before me. Mr. Metcalf, during these proceedings, made his statements and had a great many conversations and controversies with George Schley, in my hearing. He never, in my hearing, disputed or contradicted the statement made by Schley as to his authority to sell the cotton to Garsed, but he constantly urged two propositions or reasons why he ought not to be compelled to perform the contract. First, he claimed that his partners were dissatisfied, and that he ought to have consulted them; and second, he claimed that Garsed never had
219 the money at Augusta to pay for the cotton, and was himself in default under the contract. My recollection of the transaction before me is, that no formal statement by Metcalf was ever drawn up and presented to me until after I had decided the case; I mean nothing in writing; and my recollection is that his counsel, Judge Gould, did not appear prior to the decision of the case by me; but in this I may be mistaken. I made up my mind how I should decide this matter as early as the first day of August. At that time John Garsed was not in Augusta, nor did I then, nor do I now, know where he was.

I never knew Jeremiah Beall, nor do I know him now, except from his presence here in the room. I do not remember when I first knew William A. Beall, who has always heretofore been called by me Amos Beall. Some time during the few days before the second day of August, eighteen hundred and sixty-five, Mr. Metcalf called him Amos Beall, and said he was one of the parties interested in this cotton. I cannot state w'ether or not he was present at any time in my office during these preceedings; I never notified him to be present, but saw him and Metcalf repeatedly talking together in the street, and he may have
220 been in my office; he never was heard in the case. I saw him on the evening of the second day of August standing by a hitch-post in front of the entrance to my office, on Broad street, at precisely six o'clock, in conversation with Metcalf and Leopold Cohn; I passed into the office, and from the window saw Mr. Beall and Metcalf together go down the street, and Cohn very shortly came into the office. This is all I know of Beall in the case, except as will be hereinafter stated.

I first met Leopold Cohn some time in July, eighteen hundred and sixty-five; he came to me on several occasions looking after cotton interests. Shortly after Mr. Garsed's case came into my hands, Capt. A. R. Keller, then staff quartermaster of General Steedman, now residing at Lancaster, Ohio, informed me that he had been approached by Cohn, who was proposing to pay a large sum of money to get Metcalf's case decided in his (Metcalf's) favor; I informed General Steedman of the proposition, and, to save time, I want to state that from that time on until the arrest of Metcalf and Cohn I informed General Steedman of every step that was taken by me and acted expressly under his orders. After
221 some communications had passed through Keller, I agreed to name a time when I would meet Cohn personally, and finally sent him a card with the words "six p. m." written thereon, indicating the hour when I would meet him, the place, Capt. Keller's private quarters, having been already agreed on; we had several meetings between that time and the second of August; at first he offered one hundred thousand dollars to have the case decided in Metcalf's favor; finally he advanced to one hundred and fifty thousand dollars. He told me he had been the agent of Metcalf to procure his pardon, and Metcalf had given him one hundred bales of cotton for it; Metcalf had told me the same thing, except that he did not tell me the amount of cotton. I do not think that Metcalf ever told me that he had any connection with Cohn in any other matter than that of the pardon. Cohn's proposition to me was that he should have one-half of what could be got out of Metcalf, and said early in the negotiation that if it were not for the opposition of Beall he could easily get Metcalf up to two hundred thousand dollars. Cohn sent me several written communications, some of which I will produce; the others are lost. All these communications were signed by him
222 "six p. m." I determined to have evidence that would convict Metcalf without relying on the evidence of Cohn for any pupose, and Cohn proposed to bring me a thousand dollars in gold as the first instalment of the pay, and I told him not to bring it till he could comple it with some evidence that it came directly from Metcalf; and shortly after he brought the note marked A, which is as follows:

"General, I have the evidence in my possession. Do you wish to see me? If so, meet at same place, nine p. m. It will be best, I think.

"6 P. M."

That night, at 9 o'clock, he brought me one thousand dollars in gold, in a silk bag, which he said could be identified as belonging to Metcalf. Before the payment of this thousand dollars I had told Cohn that I in-

tended to decide the case in favor of Garsed unless this arrangem't was carried out. On the second of August Cohn said to me that he could get two hundred thousand dollars from Metcalf were it not for a rumour they had heard that Garsed would compromise the case through Schley, and told me to write something that he could show that I would decide the case right away unless the amount to be paid was made up.
223 He told me that they had not two hundred thousand in money at that time, and I thereupon wrote the paper marked "B," which, I think, should have been dated the second of August, and not the third, as follows:

"AUGUSTA, *August 3d*, 1865

"CAPT.: Party won't compromise. All depends on decision.

"I am willing to aid in that only not as now.

"If your party, by consent of Metcalf, sends me ten thousand dollars, by 3 p. m. to-day, all well. If not, I decide. I don't want any more talk. Above is the ultimatum.

"G.

"Captain K."

This paper was written by me and handed to Captain Keller, and by him read to Cohn, in my presence, and Cohn went with it, in his hand, to Metcalf's office. Before this time his proposition (Cohn's) was, that to secure the payment of the unpaid portion of the two hundred thousand dollars he would bring me the note of Metcalf and William A. Beall, with an assignment of warehouse-receipts for a portion of this disputed cotton sufficient to amount to the balance of the two
224 hundred thousand dollars. During the days that Cohn and I were having these interviews, I saw him a great many times in conversation with Metcalf. I know Mr. Cohn's handwriting. I saw him go to Metcalf's house, and I saw him go to Metcalf's office, and after our talk, at which he received the paper marked B, he went with it directly to Mr. Metcalf's house. Some time that afternoon I received the note marked C, as follows:

"Parties agree $200,000 cash, and the $1,000 gold. I will be at your office by 6 p. m.

"L. C."

Just before six o'clock I crossed over from General Steedman's headquarters to my office, and there saw Metcalf, Cohn, and Beall standing by the hitch-post, as I have heretofore stated. On that occasion Cohn brought to me ten thousand dollars in currency, in a cigar-box, and a paper purporting to be a warehouse-receipt for cotton, stored in the name of Metcalf and Bealls, and covering a portion of this disputed cotton. I cannot tell how many bales of the cotton were covered. I have no distinct recollection about the whereabouts of the cotton, the exact number of bales of the cotton, or any definite marks or description of the cotton. Cohn estimated the cotton at one hundred dollars a bale, and it amounted to over two hundred thousand dollars. I gave
225 this paper no special consideration, as I never intended to make any use of it; have no recollection of what I did with the paper, or what became of it. At the same time Cohn gave me a promissory note, of which the paper marked D is a true copy, as follows:

"$200,000. AUGUSTA, *Aug. 2d*, 1865.

"Ten days after date I promise to pay to Wm. A. Beall, or order, two hundred thousand dollars, for value rec'd.

"THOS. S. METCALF."

(Endorsed:) "WM. A. BEALL."

This note was signed by Metcalf. I know and recognised his handwriting. The endorsement on the back, "Wm. A. Beall," was not in the handwriting of Metcalf or Cohn. I had not then, nor have I since, seen the writing of Mr. Beall to know it, and hence am unable to say who endorsed the note. Immediately following this, Metcalf and Cohn were arrested and put in jail, and the charges and specifications marked "E" were preferred against them by myself. I am not certain of the date of this arrest, but am inclined to believe it was on the third day of August. I am now positive that the order of the second of August was agreed upon and drawn in pencil on the evening
226 of the first of August, and dated the second of August. I refer to the order set out on the third page of the printed copy of the original bill in this case. On the morning following this arrest, Joshua Hill called upon me, and obtained an order authorising him to visit Metcalf at all times as his counsel, and he made repeated visits during several days to Metcalf, and to headquarters. On the tenth of August he brought me the paper marked "F," the body of which I believe to be in the handwriting of Joshua Hill, and the words "Augusta, Ga., 10 August, 1865," and the signature I know to be in the handwriting of Thomas S. Metcalf. The statement that he would take no steps to disturb the order of the second of August, issued in the cotton case, was placed there voluntarily by himself, or his counsel, without my knowledge and without any suggestion from me, and that promise, or any other, with reference to the Garsed cotton matter, was never made a condition precedent to his discharge. About the same time the paper marked "G," came to my hands, but I cannot state from whom. The date and signature are in the handwriting of Leopold Cohn. The discharge of Metcalf and Cohn from jail had nothing to do with the Garsed cotton
227 transaction. I had not seen Garsed from the day preceding the decision of the cotton case, prior to their discharge, nor had I had any communication with or from him, or from any person assuming to act for him, nor did I then, nor do I now, know where he was during any portion of that time.

In the mean time every possible facility was rendered to Metcalf's counsel to apply to General Thomas to have my order reversed, and the thirty days' time mentioned in the order was given for the purpose of affording them ample time to relieve me from the responsibility of the case, and I offered to Mr. Metcalf and his counsel, thro' Joshua Hill, military passes, free transportation, and the use of the papers in the case, to enable them to go to Nashville and make their application, and these offers were made not only before but also after the discharge of Metcalf and Cohn from jail.

The order of the thirty-first of August, eighteen hundred and sixty-five, set out on the fourth page of the printed copy of the original bill, was made for the purpose of having the cotton prepared for shipment, and with the distinct understanding that no portion of the cotton was to be removed until notice by telegraph was received of the hon-
228 oring of the drafts given in payment for the cotton. And this regulation could easily be enforced, from the fact that no cotton could be shipped in any part of Georgia without a permit signed by me. But the condition above referred to in the order of the thirty-first of August, not having been expressed in the order itself, before leaving for Ohio, on the night of September first, to relieve the case from the danger of any misunderstanding, I issued the order of September first, eighteen hundred and sixty-five, revoking that order, and I think that Metcalf or his counsel had protested against the order of August thirty-first.

The order of September first, eighteen hundred and sixty-five, was the last military act of mine.

During all the time, from the date of the first order up to the time I left Georgia, William A. Beall was, from time to time, about the streets of Augusta.

During the time that Metcalf was in jail, he offered, through Joshua Hill, a great many explanations regarding his conduct in this transaction, but at no time did any one suggest to me, on his behalf, that the money paid, offered, or promised, was intended as a compromise of this case. Some lawyer, from Providence, Rhode Island, representing himself to be a relative and agent of Metcalf, came to me after Met-
229 calf was discharged from jail, and asked me if I thought a compromise of this case could be effected with Garsed. I told him I knew nothing about it, and did not know where Garsed was, and this ended the interview.

Since the beginning of the fall term of the circuit court of the United States in this district, at the request of Mr. Garsed and his counsel, I have made diligent search among the records and papers of the department of Georgia, for certain papers left by me in my office, pertaining to this case. I made search at Atlanta, Nashville, and Louisville, and had the assistance of the clerks at General Thomas' headquarters at Louisville; at the last place I found the records of the department of Georgia, including the books of the provost-marshal-general's office, and a large number of papers belonging to the same office, many of them papers which had passed through my hands. I looked especially for the Glasgow letter, marked "Exhibit E," in the answer of George Schley. The papers marked respectively "D" and "D D," in the same answer, and the original note for two hundred thousand dollars, signed by Metcalf, and endorsed by Beal, and, I think, other papers, I looked for, having a memorandum for that purpose. I turned over and examined
230 all the papers found; I found none of the papers above named. I left all these papers among the papers in this case in my office. They were not recorded; it is not the custom in the military department to record papers, and I know nothing about where these papers are. All the military books and papers had been removed from Atlanta and Nashville, to Louisville, the headquarters of the division.

I left Augusta on the morning of the second day of September, and returned there about the twentieth day of October, and remained a few days, but did no business.

I then returned to Ohio, and was mustered out of service.

I at no time made any threat against Metcalf, tending to compel him to deliver any of this cotton, either by word or letter, or to effect a compromise or settlement, and all the acts done by me subsequent to my muster-out of service were caused by two false, garbled, and lying reports about the facts of this cotton case, the publication of which I am informed was procured by Ketcalf, or parties in his interest, in the New York Times, and the Army and Navy Journal, one of the persons connected with the latter being, as I understand, a relative of Met-
231 calf's, and these steps were taken with a view to procure an investigation, through the War Department, of the whole transaction, so far as it related to me.

The original order of August second I found on the order-book at Louisville, as well as the subsequent orders in the case. They are correctly set forth in the printed copy of the bill and answers.

The cotton sold by Metcalf and Schley to Garsed, which was at Au-

gusta, had been delivered to Garsed and paid for by him prior to the third of August.

On the second of August General Steedman directed me to hear some additional statements on behalf of Metcalf relating to the case, and I did so, but the order of the second of August had been made before that time.

The eleven thousand dollars paid on this matter by Cohn, were handed over by General Steedman to a committee of three gentlemen in Augusta, the name of only one of whom I remember, Antoine Poullaine, and by them it was distributed to the suffering poor of Augusta.

On the packages of currency received by me there were slips of paper and bank-marks, letters, and figures, and I depended upon these for evidence to prove who had furnished this money.

232 The endorsement on the original charges and specifications against Metcalf and Cohn, marked "E," and hereto attached, is in the handwriting of Cohn, and the witness thereto resides at Big Run, Athens County, Ohio, at this time; and the pencil endorsement, of which Cohn's endorsement is a copy, was made by some one for him after the original paper left my possession, and before it was returned.

(Defendant's counsel objected to each portion of the foregoing testimony of C. H. Grosvenor, as it progressed, for all the reasons specified as objections to the testimony of Robert Schley, and it was agreed by counsel that the objections should be thus noted.)

Cross-examination on the part of Thomas S. Metcalf.

Question 1. What was your authority as provost-marshal-general?

Answer. I do not know; that is not a question of fact but of law.

Question 2. Did you issue any orders except by authority of General Steedman?

Answer. None. I had his authority, either expressly or constructively, for all orders issued by me.

Question 3. Do I understand that you issued no order upon your own sole authority?

Answer. I so state; referring to my answer above.

Question 4. Can you state how long, previous to the twenty-
233 sixth day of July, Mr. Metcalf told you that a pardon had been granted him?

Answer. I cannot; but think it was after my return from Macon.

Question 5. Do you state that Metcalf told you distinctly that he and Schley had sold Garsed over thirteen thousand bales of cotton?

Answer. He spoke of the cotton, on which he had lost money by an early sale, as thirteen thousand bales or about that figure.

Question 6. You stated in your direct testimony, that you declined Mr. Garsed's request to decide the controversy between him and Metcalf, and gave your reasons for it; what were the reasons you gave?

Answer. I cannot state all the reasons I gave, but one was, I remember, I told Mr. Garsed that it was the policy of the military authorities at Augusta to avoid as far as possible having anything to do with private controversies; I made my condition of health another reason, and I may have given others.

Question 7. Did you, and Schley, and Metcalf have more than one interview on this subject, before Judge Gould applied to you as counsel for Metcalf for a hearing?

Answer. Yes; we met, the three of us, on several occasions, running over, I think, a period, from first to last, of five days, and Metcalf came to me frequently alone, as did Schley also.

Question 8. When Mr. Gould first applied to you for a hearing,
234 did you not tell him that you had decided the case?

Answer. I have no recollection now what I said to Judge Gould, but I think I had decided the case, and, if so, no doubt I so answered him.

Question 9. Did he not ask you to show him the evidence upon which your decision was founded?

Answer. I cannot pretend to give the order in which things took place, but I gave Judge Gould all the papers in my possession pertaining to the case.

Question 10. When Mr. Garsed called upon you the second time, did not you hand him two additional affidavits, the affidavits of Freedman and Waltermair, saying you had obtained them since he had last seen you?

Answer. I do not remember what I said about it, but my recollection is, that those affidavits were filed after the case was decided.

Question 11. Did you not, on the thirty-first of July, agree to give a hearing to Mr. Gould, and to receive statements on oath from Metcalf and Beall?

Answer. I may have done so, but if I did, my recollection is that you desired it for the purpose of sending the statements to General Thomas, or it may have been at the hearing which General Steedman directed me to have after the decision of the case was in fact agreed upon.

Question 12. Did not Mr. Gould, on the day fixed for the hearing, apply for further time to prepare the answers of the parties, and did
235 you not refuse, saying that General Steedman had directed you to close the matter at once?

Answer. Yes, sir; that is correct. I think this was on the second of August, and after we had ascertained that while Judge Gould was honestly representing the interest of his clients, they were trying to purchase a decision in their favour. Judge Gould appeared for Mr. Metcalf only.

Question 13. Did you or not give Mr. Gould a hearing on the afternoon of August second?

Answer. Judge Gould was heard by me at considerable length, after the receipt by me of the note marked "C," and I think it was on the afternoon of August second.

Question 14. Was not Mr. George Schley examined as a witness on that occasion?

Answer. He was there, and was probably examined as a witness. I know that he was at some time when Judge Gould was present, and I think it must have been the second of August.

Question 15. When Mr. Schley was under examination, was anything said by him or you of Metcalf's admission, testified to on your direct examination, that he authorized Schley to write the Glasgow letter?

Answer. Do not remember whether there was or not.

Question 16. In stating to Mr. Gould the evidence on which you founded your decision, did you ever mention that acknowledgement of Metcalf?

Answer. I don't think I did. I never pretended to give Judge
236 Gould a full statement of all the evidence upon which I decided that case, and never told him what Metcalf said before Gould got to Augusta; never told him about the attempts at bribery.

Question 17. Did not Mr. Gould understand, or did you not suppose he understood, that you were giving him a full statement of the evidence?

Answer. I don't know what Judge Gould understood, and I had no opinion about what he understood. I don't think he ever asked me any-

thing about the evidence, except the written evidence in my possession, which I gave him, but he may have done so.

Question 18. Did you not expect Mr. Gould to argue the case on its whole merits?

Answer. I expected him to do just as he thought proper about that.

Question 19. Mr. Gould understands you to say that the facts not communicated to him had great effect in producing your decision; why, then, were they not communicated to him, to enable him to argue the whole case?

Answer. For the reason that the case had been once decided, and we had no purpose in hearing further argument of it than to allow the bribery matter to culminate.

Question 20. How, then, did you expect the case to be carried fairly before General Thomas by appeal, with the most important evidence unknown to the defendant's counsel?

Answer. I do not know that I had any expectations about
237 it, and I never knew that it was the duty of the judge to help make the bill of exceptions.

Question 21. When Mr. Gould went before you on the second of August, did he not present to you as evidence the written affidavid of Thomas S. Metcalf, positively denying the authority of Mr. Schley to give the refusal of the cotton to Mr. Garsed till the 6th of July?

Answer. I think he had such a paper there, but I don't know what he did with it.

Question 22. Was Mr. Metcalf present at the hearing?

Answer. Part of the time I think he was, but part of the time he was having a meeting with Cohn, to conclude the two hundred thousand dollar transaction, as will be seen by a reference to my testimony in regard to that matter.

Question 23. How do you know that that interview with Cohn was in reference to the two hundred thousand dollars?

Answer. Because just before Judge Gould's argument began, I delivered to Cohn, through Keller, the paper signed by me, had seen him go to Metcalf with the paper, had received the note from Cohn marked "C," had seen Metcalf, Cohn, and Beall in consultation at the foot of the steps, and, very shortly after Judge Gould left, received the ten thousand dollars and the promissory note for two hundred thousand dol-
238 lars, signed by Metcalf in his own handwriting.

Question 24. How long was Metcalf absent on that occasion?

Answer. I do not know.

Question 25. Was not the affidavit enquired of above, that of Metcalf, read to you by Mr. Gould, in Metcalf's presence?

Answer. It may have been; I can't say. I read it at some time, or heard it read.

Question 26. On that reading, was anything said about Metcalf's previous admissions to you in opposition to that affidavit?

Answer. I think there was; I think that Schley stated that on the previous hearing before me, Metcalf had never denied his (Schley's) authority to write the Glasgow letter; that I stated to some one at the time that Metcalf's statements were wholly inconsistent with what he had admitted before.

Question 27. Did you make that statement in the presence or hearing of Mr. Gould?

Answer. I do not know; I think I should not have commented on the testimony as it was being delivered.

Question 28. Did you ever mention to any person, and to whom and

when, the statements of Metcalf, to which you have testified in relation to this sale of cotton to Garsed?

Answer. I think that I never gave as detailed a statement of the transaction as I have here given, under oath, to any one, but I stated substantially all that I have here sworn to, in regard to
239 the admissions of Metcalf, made before Garsed came, and the admission of Metcalf on a hearing to Gen'l Steedman at the time of the transaction, to many parties at my house in Ohio, and, at the last fall term of this court, to Judge Stephens and Gov. H. V. Johnson, here in Savannah, and I think wrote a portion at least of it, and perhaps all, to Judge Stephens, and I caused a printed statement of some of the leading facts in this case to be published in the newspapers of the senatorial district in which I live in Ohio, in eighteen hundred and sixty-five.

Question 29. After the hearing of the second of August, did you not lend to Mr. Gould copies of all the proceedings in the case, for the purpose of making up the record for Gen'l Thomas?

Answer. I did furnish to Judge Gould copies of all the papers in my possession, and I informed him how he could carry the case to Gen'l Thomas and the War Department; I required those papers to be returned to me, after Judge Gould had gotten through with them.

Question 30. Have you ever made search for these original papers, and do you know where they are?

Answer. In searching for the papers which I have referred to in my examination-in-chief, I saw no papers belonging to this case, and I have no knowledge of their whereabouts.

Question 31. After Mr. Metcalf's arrest on the charge of bribery,
240 had you any personal communication with him?

Answer. I think not; I may have spoken to him on the street, but do not think I did.

Question 32. You stated in your direct examination that Metcalf's pledge not to carry this case further, in the paper which you submitted, was voluntary; how do you know that fact?

Answer. Because I never required or suggested any such pledge.

Question 33. Do you not believe, and give your reasons for believing, that Metcalf was informed by Joshua Hill that without that pledge the prosecution for bribery would go on?

Answer. I have no belief on that subject.

Question 34. Did you never threaten to renew the prosecution for bribery, unless this case was settled by Metcalf?

Answer. I certainly never did during the time I was in the military service; at least I have no recollection of it.

Question 35. When the order of the thirty-first of August was issued, did not Mr. Gould remonstrate with you against that order?

Answer. I know some one on behalf of Metcalf did, and I think it was Judge Gould.

Question 36. Did you not then refuse to change that order?

Answer. When first spoken to, I did, and afterwards the suggestion was made to me by Judge Gould, and the other considerations which I have mentioned, caused the change in the order.

241 Question 37. Is not your recollection incorrect? Did not General Steedman, on the evening of the same day after your interview with Mr. Gould, direct you to revoke the order?

Answer. I think General Steedman did direct me to revoke the order, and I know he directed me to issue the order.

Question 38. At the interview with Mr. Gould above referred to, at the city-hall in Augusta, on the first day of September, did you not close

the discussion in words as follows, or to that effect: "Mr. Metcalf knows where I have got him, and if he makes any difficulty in obeying this order, I'll renew the charge of bribery, and have him arrested at once, so help me God?"

Answer. I do not remember using these words. I was a good deal out of patience by the constant annoyance we had received about this cotton, and was arranging to leave for the North the next morning, and I think I used some language rougher, more profane than that quoted by Judge Gould in the question, and I may have threatened a renewal of the bribery charges, but if so, the trouble referred to didn't relate to any attempt on the part of Metcalf to appeal the case, and in any event I recommended the revocation of the order as soon as I saw General Steedman. In my answer to a former question on this cross-
242 examination, I had entirely forgotten this interview at the city-hall.

Further answering question 28, witness says as follows: I think I did not write directly to Judge Stephens of what my testimony would be in this case, as I did not know at that time the address of Judge Stephens, but I did write a statement of it to Mr. Garsed, and when I saw Judge Stephens he told me he had that letter or a copy of it.

Cross-examination on the part of William A. and Jeremiah Beall:

Question 1. In all your investigations of and dealings with this case, Mr. Hill understands you to say you had no examination or trial of or on account of William A. and Jeremiah Beall.

Answer. That is correct.

Question 2. In the admissions testified to by you, as made by Mr. Metcalf, both before and during the investigation, I understand you to say Mr. Metcalf said he had not consulted the Bealls, and that they refused to ratify the trade when informed of it.

Answer. That is correct, as I have said all along through.

Question 3. Did not Mr. Metcalf, if he made the admissions to which you testify, also tell Mr. Schley that he had no authority from
243 the Bealls to make the sale?

Answer. He did state to Mr. Schley in my presence that the Bealls were not consulted about the sale made to Garsed, and were dissatisfied with the sale as made; he said nothing either way about his own authority.

Question 4. At whose instance do you attend here to give your testimony?

Answer. At the instance of John Garsed.

Question 5. Who pays your expenses?

Answer. Mr. Garsed has so far paid my expenses.

Question 6. How much has he agreed to pay you besides your expenses?

Answer. Not one cent.

Question 7. Have you at any time had an interest, expressly or tacitly, in this controversy?

Answer. I never have.

Question 8. Do you not expect, if Mr. Garsed should realize largely from this suit, a portion of the recovery or some compensation for your servises?

Answer. I do not expect any portion of the recovery in any event, and I have no reason to expect any greater compensation in the 'vent of a recovery than in the 'vent of a defeat.

Question 9. Have you not had interviews and conversations with

John Garsed, as to how the parties might be alarmed or influenced to pay something for a compromise of this case, and to get their peace?

244 Answer. No, I never have; I think Garsed has told me on several occasions that there had been talk of compromising the cotton case, but I don't think he ever disclosed to me any means that he was trying to use to bring it about.

Question 10. Have you not aided by your counsel, suggestion, or otherwise, any efforts made by Garsed, or his counsel, or others, to drive or influence the defendants, or either of them, to pay something for a compromise or settlement of this case?

Answer. I never knew Garsed's counsel to make any effort except to be ready for trial, and never made any suggestion to them on the subject of a compromise. I have talked many times with Garsed about his case, and have made suggestions to him about it. I have given no suggestions or counsel to any body else in connection with the case, and now remember no acts of mine other than those referred to in my examination-in-chief, one of which was to send a written communication to the President of the United States, and this related only to the false publications I have referred to.

Question 11. You say that during the investigation before you Mr. Schley exhibited the Glasgow letter, and a telegram from Garsed to Schley of the sixth of July; did he or not also exhibit, during the

245 *the* investigation, a telegram from George Schley to John Garsed, of the first of July, in which he (Schley) said he had misunderstood the parties giving till sixth on number three—the nine thousand and *good* lot?

Answer. I am not certain about that; I don't think that any such telegram was produced, but there may have been, and in any event Schley testified to the sending such a telegram.

Question 12. Did he exhibit the telegram of the eighth of July?

Answer. There was no such despatch exhibited there, but Schley testified to the sending of such a despatch.

Question 13. Did you not pass an order after his release from prison ordering Cohn to leave the State, and forbidding his return till further orders?

Answer. No, sir; such an order was issued and printed before his release from prison; that was one of the conditions upon which he was released.

Question 14. Did you ever revoke that order?

Answer. No, I did not.

Question 15. Did you not send word to Cohn, after he was gone, "not to do anything till I see you?"

Answer. No, I never sent him any such word. I had some talk with some Jew; I think his name was Morris I. Leon, of New York. I travelled with him from Augusta to Savannah; Leon wanted me to help

246 him get Cohn permission to return to Georgia, and I think I told him, and perhaps authorized him, to say to Cohen that I was willing for him to come back, or something to that effect.

Question 16. Did you or not, directly or indirectly, request or suggest to Freedman to see or have a conversation with Cohn and get information from him?

Answer. I heard at one time that Metcalf hired Cohn to swear that Metcalf had nothing to do with the bribery, and I think I inquired of somebody who knew Cohn if that was so, and that man may have been Freedman, although I would not know Freedman to-day if I met him in the middle of the road.

Question 17. Did you not encourage Cohn to offer you a bribe?

Answer. I did encourage him to proceed, after I had received the communication from Capt. Keller.

Question 18. Were not your remarks to Cohn calculated to make him believe that if he offered a bribe you would accept it?

Answer. They were.

Question 19. Were they not intended to make him so believe?

Answer. They were; all this took place, however, after the information received from Keller of the offer.

Question 20. Previously to this Cohn had not said anything to
247 you upon the subject of bribery of yourself?

Answer. He had not.

Question 21. When Cohn proposed to you to divide the amount received from Metcalf, what did you say?

Answer. I told him to go on and make his arrangements, and we would not disagree.

Question 22. Did you not encourage Cohn to get as much as he could out of Metcalf?

Answer. I did, and for the reason that I feared if I showed any indications of a willingness to take a lower sum than it was possible to get Cohn might become suspicious, and fly the track.

Question 23. Do you intend to say that you at no time used, or sought to use, that charge of bribery against Metcalf as a means to enable Garsed, by way of compromise or settlement, to get money out of these defendants?

Answer. I say so.

Question 24. Did you never verbally, or in writing, say that you withdrew the case, meaning the charge of bribery, because, among other reasons, they, meaning the defendants, had acknowledged that your decision of the cotton case was correct, and that they would abide by and perform their original contract with Garsed?

Answer. (The witness refuses to answer the foregoing question, because it is not within the legal rule, inasmuch as it does not
248 name time or place, or the parties to whom such statements are alleged to have been made.)

NOTE.—(The answer is insisted upon by the defendant's counsel.)

The witness states that he has no recollection of having stated anything like the matter stated in the question, but have, on several occasions, in explanation of the reasons why the bribery prosecution was abandoned, stated that inasmuch as the whole matter was settled, Cohn had admitted the whole charge in writing, and Metcalf had made an explanation which was satisfactory, I was willing to quit, and I have no doubt that I have very many times stated orally, and I may have so written, that I supposed the cotton case was so settled before I left Augusta, and would so remain.

Question 25. Have you not made the payment of money to Garsed in this case a condition precedent to satisfaction on your part with the non-trial of the defendants, or either of them, on the charge of bribery?

Answer. No.

Question 26. Have you not made the performance of the contract alleged to have been made by Metcalf for the sale of this cotton
249 to Garsed, or the settlement of the case, in a manner satisfactory to John Garsed, one of the conditions precedent to the abandonment or non-renewal of the charge of bribery by you?

Answer. I do not remember of ever having any communication with

John Garsed, as to how the parties might be alarmed or influenced to pay something for a compromise of this case, and to get their peace?

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Answer. (The witness refuses to answer the foregoing question, because it is not within the legal rule, inasmuch as it does not
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Question 25. Have you not made the payment of money to Garsed in this case a condition precedent to satisfaction on your part with the non-trial of the defendants, or either of them, on the charge of bribery?

Answer. No.

Question 26. Have you not made the performance of the contract alleged to have been made by Metcalf for the sale of this cotton
249 to Garsed, or the settlement of the case, in a manner satisfactory to John Garsed, one of the conditions precedent to the abandonment or non-renewal of the charge of bribery by you?

Answer. I do not remember of ever having any communication with

any one about such a settlement, and I have never made any such condition.

Question 27. Did you ever renew or refile the charge of bribery against Metcalf or either of the defendants, or both of them?

Answer. I think I sent a copy of the charges and specifications to General Steedman in Washington after I was mustered out of the service, and I do not know now if they were presented at the War Department or not. They were never refiled in the department of Georgia.

Question 28. Did you not, in February, 1866, say in writing that you had filed the charges, and should insist that unless they, the defendants, meaning Metcalf and the Bealls, carry out in good faith the agreement made at the time you withdrew the former proceedings, meaning the proceedings in bribery, thereby reaffirming your former decision, they, the defendants, should be tried and punished?

(Objected to by plaintiff' counsel, because the person, time, and place are not named.)

Answer. I have no recollection of having written such a letter as
250 that, but the language used in that question very accurately describes my feelings in February, eighteen hundred and sixty-six, and I may have used substantially that language to some one; but my anxiety to have that contract carried out grew out of the slanderous publications that I have heretofore alluded to, and the settlement of the case would have been a vindication of my course in the matter.

Question 29. Did you not make such a statement or statements to that effect in February, eighteen hundred and sixty-six, in Ohio, at Athens, or at the St. Nicholas Hotel in New York, or at Washington City, to be sent or brought by John Garsed to Georgia, to be used as means to induce, compel, or alarm the defendants to pay money by way of compromise or settlement of this case, and which statements were given to John Garsed in the form of a letter written by you to General Steedman?

Answer. General Steedman wrote a letter to me some time in the winter of 1866, the date I do not recollect, urging me to insist upon a farther investigation of my conduct in this cotton transaction, and referred to this publication of the charges made in the original bill, in this case,
which had been circulated extensively in Ohio, through the press,
251 and I wrote to General Steedman; whether I sent the letter by Garsed or not I can't state; my recollection of that letter is, though it has been a long time since I wrote it, more than three years, that I told General Steedman that the carrying out of the contract would be a sufficient vindication of my attitude in the transaction. And Garsed may have known of the writing of this letter, but I don't think I ever showed it to him. I intended it simply as a statement to General Steedman of what I would do, and I had no intention or expectation that the contents of that letter would ever be known by any of the defendants.

Question 30. Where was Generals Steedman's letter to you, and referred to by you, in fact written?

Answer. I don't know; if ever I did know, I have forgotten.

Question 31. In what way was it conveyed to you; by mail or by hand?

Answer. I have no recollection about that. Mr. Garsed stopped at my house on his way from Georgia to Washington, or from Washington to Georgia, I don't know which; he may have brought that letter, or it may have come by mail.

Question 32. At what place was your answer to that letter actually written?

Answer. I think it was written at my house. I have no recol-
252 lection of writing one from any other place.

Question 33. To whom did you deliver that answer?

Answer. I think I delivered that letter to Garsed; but I cannot state positively.

Question 34. Did not John Garsed carry the letter from Steedman to you, and did you not deliver both the letter of Steedman and the answer back to John Garsed?

Answer. I can give no further answer to this question than to the two last ones, and I don't think I handed Steedman's letter back to Garsed. I think I have the original, or a copy, on file at my office.

Question 35. Was not John Garsed, in point of fact, made acquainted with the contents of both letters?

Answer. I don't know what he knew about Steedman's letter, and I may have read him my letter or I may not. I cannot answer positively. If he was there when I wrote the letter I apprehend I read it to him.

Question 36. Did you not know or beleive, at that time, that the object of John Garsed was to use these letters, or have them used, to get money by way of a pretended settlement of this case?

Answer. I did not know anything about it, and did not think anything of the kind. I wrote the letter for the purpose expressed in the letter, and for no other, and I did everything in my power to carry out the threat expressed in the letter as against Metcalf, but never
253 as against the Bealls.

Question 37. Were these the only letters that passed between you and General Steedman in February, 1866?

Answer. I think that I wrote to General Steedman on this subject more than once, but w'ether at any other time in February I am unable to state; if I did, I do not remember. I did not remember this one till my attention was called to it.

Question 38. Had you, in point of fact, filed in the War-Office, at Washington, previously to this correspondence, second charges and specifications of bribery against Metcalf, the Bealls, and Cohn, or either of them?

Answer. I never filed any against the Bealls. I had against Metcalf on the twenty-ninth of November, eighteen hundred and sixty-five, and I think had forwarded a copy of the original charges to the Secretary of War.

Question 39. Is not this paper, now shown you, a correct copy of the original letter written to you by General Steedman?

Answer. This is a true copy of a letter received by me from General Steedman, and I think would have drawn out the response that I have referred to; but if this is the letter, I got another at the same time,
(letter attached to answer, marked XX, with name of examiner,)
254 but I am certain that the other letter contained a much fuller statement of General Steedman's views than the one here exhibited. Upon reflection I am able to state definitely that I received the letter, marked as above, by mail, and it was forwarded to me at Columbus, Ohio, where I was attending the session of the legislature from early in February till about the first of March, excepting a short visit made to Washington, via Belair, and not via my home, from which visit I returned to Columbus on the eighteenth day of February, it being the day on which Mr. Sherman was nominated for Senator by the legislature.

Question 40. You say you answered a letter; was the answer written

any one about such a settlement, and I have never made any such condition.

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Answer. I think that I wrote to General Steedman on this subject more than once, but w'ether at any other time in February I am unable to state; if I did, I do not remember. I did not remember this one till my attention was called to it.

Question 38. Had you, in point of fact, filed in the War-Office, at Washington, previously to this correspondence, second charges and specifications of bribery against Metcalf, the Bealls, and Cohn, or either of them?

Answer. I never filed any against the Bealls. I had against Metcalf on the twenty-ninth of November, eighteen hundred and sixty-five, and I think had forwarded a copy of the original charges to the Secretary of War.

Question 39. Is not this paper, now shown you, a correct copy of the original letter written to you by General Steedman?

Answer. This is a true copy of a letter received by me from General Steedman, and I think would have drawn out the response that I have referred to; but if this is the letter, I got another at the same time,
(letter attached to answer, marked XX, with name of examiner,)
254 but I am certain that the other letter contained a much fuller statement of General Steedman's views than the one here exhibited. Upon reflection I am able to state definitely that I received the letter, marked as above, by mail, and it was forwarded to me at Columbus, Ohio, where I was attending the session of the legislature from early in February till about the first of March, excepting a short visit made to Washington, via Belair, and not via my home, from which visit I returned to Columbus on the eighteenth day of February, it being the day on which Mr. Sherman was nominated for Senator by the legislature.

Question 40. You say you answered a letter; was the answer written

by you in reply to this letter now exhibited, or to the other one to which you have referred?

Answer. I think I answered both letters, and I am confident I sent both answers by mail to General Steedman. I can now state definately that I answered both letters by mail, and sent no answer by Garsed; he was at my house only about one hour after dark.

Question 41. Where did you write the answers from?

Answer. I can't state. I was more likely to have written them during that time from a point away from home than from home, as I was at home but a very little from the first of January till the first of March.

Question 42. What time do you say you met General Steed-
255 man in New York?

Answer. I met him there during the last days of March.

Question 43. Did you both s'ay at the same hotel, and at what hotel?

Answer. Yes; at the St. Nicholas.

Question 44. How long did you remain at that hotel, and was Garsed there with you?

Answer. I arrived at six o'clock in the morning and left at about the same hour in the evening; John Garsed was not there.

Question 45. Is the copy letter now shown you a correct copy of your reply to the above letter of General Steedman?

Answer. The letter ma'ked XXX, with examiner's name, I cannot say we'ther or not this is a true copy, but I think it contains the substance of what I wrote to General Steedman, and is probably a true copy, but I think it likely it should have been dated at Columbus. I not unfrequently wrote letters at Columbus and dated them at Athens, for fear the answer should be missent.

Question 46. Do I understand you to say that the original of that letter was sent by mail to General Steedman, and at Washington City?

Answer. I think it was; I think I never sent General Steedman a letter in any other way, from Ohio, but I may be mistaken.

Question 47. Do you not know that the charges referred to
256 in that letter were never, in point of fact, filed in the War-Office at Washington?

Answer. On the contrary, I know they were; Gen'l Holt, the Judge-Advocate-General, told me that they were there, and he had read them.

Question 48. Were the terms prescribed in the letter, upon which you agreed to be satisfied and to withdraw the charge, ever complied with?

Answer. They never were.

Question 49. Did you ever press these charges to a hearing?

Answer. I did not press them to a hearing, but did all I could without seeming over-anxious. I requested it over and over again, and I never ceased to insist upon it, until I was satisfied that the influence that had procured the War Department to utterly stultify its record of fours years' practice was greater than I could overcome.

Question 50. What influence do you refer to, and how was it exercised?

Answer. I do not know what the influence was, but I heard Benjamin H. Hill, of Georgia, state that it was his influence which procured the revocation of my order.

Question 51. When and where did you hear Benjamin H. Hill state that his influence had procured the revocation of your order?

Answer. In the city of Savannah, Georgia, on the fifth day of May, eighteen hundred and sixty-nine.

Question 52. Who was present when you heard Benjamin H. Hill make that statement?

257 Answer. Gen'l Robert Toombs, Gov. H. V. Johnston, Judge Gould, Mr. Ashton, of Washington, and others.

Question 53. How long did you wait after writing the letter of the twenty-fourth of February, to see if the terms therein required were complied with, before pressing the charges at Washington City?

Answer. I think my next attempt in that direction was about the twenty-eighth or twenty-ninth day of March, on my way to New York.

Question 54. Who informed you of the failure of your terms prescribed in your letter?

Answer. I think it was Col. Mor, the adjutant-general of General Steedman; I met him at Washington.

Question 55. Upon whom, at the War Department, did you press for a trial of those charges?

Answer. Mr. Stanton, Judge Holt, and Andrew Johnson.

Question 56. At what time did you commence pressing these gentlemen for a trial upon these charges?

Answer. In November, eighteen hundred and sixty-five. The witness states that in the copy of the letter exhibited here, written to General Steedman, he observed that the words Metcalf, Bealls, and Cohn, are used by him, and he states that the use of the word "Bealls" must have been suggested by the fact that those gentlemen had appeared in the
258 civil action or from Generals Steedman's letter, in which the latter uses the same word, and he states that he never, in any communication or charges to the War Department, of any kind, named the Bealls, so far as he now recollects.

Question 57. At what time did you see and have a conversation with Leopold Cohn in Washington?

Answer. It was on or about the twenty-ninth day of November, eighteen hundred and sixty-five.

Re-examined by counsel for Garsed:

Question 1. Suppose there had been an appeal from your decission, to Gen'l Thomas, what would have been your duty?

Answer. The first step that would have been taken, would have been an order from General Thomas to General Steedman, directing that I make full report in writing of the reasons upon which I based that order; that was the invariable practice throughout the Army, when any military officer issued an order; and it would have been my duty to make full report of all facts within my knowledge concerning the case.

Question 2. Would this report have included all the facts which came to your knowledge from your conversations with Mr. Metcalf or otherwise, and which were not communicated by you to Judge Gould?

259 Answer. It would.

Question 3. Did you write the letter now handed to you?

Answer. I did.

Question 4. Is that or not one of the letters about which you testified as having written, touching the admission made by Mr. Metcalf?

Answer. It is one, but I wrote another, giving a much fuller statement.

(Letters marked X X X X, Joseph P. Carr; of that other letter, the one marked ‡, Joseph P. Carr, is a true copy.)

Question 5. Do you think the paper now shown you is the testimony of Schley, as given before you, on the trial of the case?

Answer. I think it is.

(Marked ‡ ‡, Joseph P. Carr.)

(Both these papers objected to by counsel for defendants. The last

objected to as incomplete; not the testimony taken in the case, but only an ex parte affidavit.)

Re-examined by defendants Metcalf:

Question 1. When you announced to me your decision in this case, did you not say, "I expect you will be surprised at it; I have not had time to write out my reasons, but will do so in a few days and show it to you, in justice to myself," or words to that effect?

Answer. I think I used just about that language, and meant to
260 at that time state fully all I knew about the case; but I decided not to do so until the bribery matter had been fully settled.

Question 2. Did you ever give Mr. Gould that decision?

Answer. I know I never did.

C. H. GROSVENOR.

261 *Testimony of John Garsed.*

JOHN GARSED, who, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

I am the complainant in the case; I reside in Philadelphia; my vocation is the manufacture of cotton yarns. I arrived in Augusta, Georgia, on the twenty-sixth of June, eighteen hundred and sixty-five. I visited Augusta for the purpose of purchasing cotton. I met George Schley, whom I had known before, on the twenty-seventh of June; he asked me wither I was there to purchase cotton; I told him I was; he said he had two lots in Augusta, Georgia, two thousand and eighty bales; lot number one could be bought for twenty-five cents in currency; lot number two, six hundred bales, could be bought for eighteen cents in gold; he appointed the next morning, the morning of the twenty-eighth, to go and examine the cotton; I examined the cotton with his brother Robert Schley; we then returned to the office of George Schley, and I agreed to pay the price named if he would give me until the sixth of July to answer.
262 That offer was reduced to writing. I left that writing at the provost-marshal office in Augusta. I left it there at the time of the trial before the military; was requested to leave it there by the provost-marshals-general; it was not returned to me. I have not seen it since I left it there. It is not in my power, custody, or control; I do not know where it is. I have made efforts to get it. I have received letters from the War Department to search the records of the military department of Georgia, and the missing papers could not be found. I did not make the searches myself; at my request Genl. Grosvenor searched the records himself, and General' Whipple and Meade had the records searched for the missing paper, and it could not be found. The exhibit marked "D D" to the answer of George Schley to the original bill contains a true copy of that paper. I know it to be a true copy from memory, the paper having been in my possession. I did not at any time take a copy of it that I remember. After the paper had been executed at Schley's office, on the same day, it was delivered to me; it was about twelve o'clock; at the same time George Schley handed me a letter, a copy of which is marked "Exhibit D," and annexed to the *to the*
263 answer of George Schley to the original bill, which terms I declined, not having the money in Augusta at the time, but remarked if I had until the sixth of July, same as the lots one, two, I would answer by telegraph. George Schley added lot three on the letter copy of which is marked "D D." In the afternoon of June

twenty-eighth, Schley (George) told me "the parties refused to sell, unless money was here to-day." I remarked that I would forget the large lot, number three, meaning I would not bring a million of dollars for something which I had not purchased. The next communication I received from George Schley was at the house of Robert Schley, at Belville, between eight and nine o'clock on the evening of the twenty-eighth, a copy of which is marked, in the answer of George Schley to the original bill, "Exhibit E." On the morning of the twenty-ninth I left for Philadelphia. I arrived at Philadelphia on the afternoon of the fifth July.

I have not the original of the copies marked "D D and E," in the exhibits aforesaid. The paper (a copy of which is marked "E," called the Glasgow letter) was left in the provost-marshal-general's office. I have not seen it since. It is not in my power, custody, or control. I have made the sam' search for it as for the others, and cannot
264 find it. I know it was in the handwriting of George Schley. I know his handwriting.

I went to our own office at one hundred and nine Ches'nut street, and found my brother had left for home, some six miles distant. I then went to the store of Robert Patterson & Co., and was told by his clerk that the general (Robert Patterson) was sick and at home. I then went to my home in Frankford, six miles distant. On the morning of the sixth of July I went to the residence of General Patterson, and showed him the offers "D D and E," and asked if he would agree to furnish from seventeen hundred thousand dollars to two millions dollars to purchase these lots of cotton, which he agreed to do. I then returned to our store and wrote the telegram, a copy of which is marked "Exhibit B" in my answer to the original bill.

The paper now shown me is a copy of the original despatch. I have a copy in my letter-book. I compare the two and find them the same. The copy in my letter-book is a press-copy from the original.

After sending the telegraphic despatch, on the morning of the sixth of July, eighteen hundred and sixty-five, I went to the store of
265 Robert Patterson & Co., and received from them ten thousand dollars in currency and ten thousand dollars in gold, which I forwarded by Adams Express Company to George Schley, at Augusta, Georgia, on account of the purchase of the three lots of cotton. I returned to Augusta on the twenty-fourth of July, eighteen hundred and sixty-five, leaving Philadelphia on Wednesday, the twelfth of July, making all the diligence I could to arrive at Augusta, communications being broken. On the twenty-fifth of July I settled with George Schley for lots one and two, and the cotton (2,680 bales) was delivered, and I then demanded the third lot. He stated the parties refused to deliver. On the morning of the twenty-sixth of July I called at General Steedman's headquarters, stated my business, which was to procure the enforcement of the contract. He referred me to General Grosvenor. I called on General Grosvenor, who was sick at the time, and told me to leave my papers in the case, which I did. On August third, in the morning, at five o'clock, I received his decision in the cotton case. I left for Philadelphia on the train at six o'clock to make arrangements to have the money ready by the time the thirty days had expired, named in General Grosvenor's order of August second.

266 I had, lying at Augusta, over one hundred thousand dollars more than was necessary to pay for lots one and two at the time I demanded lot three. I received a despatch from George Schley saying send no more money to Augusta.

This despatch is dated Augusta, Georgia, August the tenth.

I received a despatch on the seventh of July which was dated Augusta, July first. After receiving this despatch I continued to send money until I received a despatch from George Schley, dated tenth of August. On the trip on which I left Augusta, on the morning of the third of August, I reached Philadelphia on the afternoon of the eighth; I received the following telegram from George Schley after my arrival in Philadelphia:

"97. Dated AUGUSTA, GA., *Aug.* 10, 1865.
"Recd., Philadelphia, 1865, o'clock min., m.
"To JOHN GARSED,
"109 *Ches'nut St., Ph'a:*

"Case all settled. Funds wanted in N. Y. Will telegraph fully to-morrow.

"GEO. SCHLEY."

I left Philadelphia on the thirteenth August for Augusta. In consequence of the change of mode of payment, as stated in the despatch of George Schley, that funds were wanted in New York, I ceased sending money. While sending money, I sent it as fast as the express
267 company would receive it. They refused to bring it faster, as they alleged, because of the disturbed state of the country. I cannot say in what amounts they were willing to bring it. I had made preparations for the money, and it was to be sent forward and be in Augusta by the time that each lot was reweighed and bills made for it.

Mr. Schley knew, at the time of the purchase, that I was a manufacturer, and that this was my reason for my purchase. I had no conversation with Mr. Metcalf on the subject, either of the contract or the purpose for which I wished to buy the cotton.

I had to purchase cotton in the market from the non-fulfilment of the contract made with George Schley, at a higher price. I paid as high as thirty-five cents a pound more than the contract price. I paid as high as fifty-eight cents a pound for some cotton. It made a difference of from one million to fifteen hundred thousand dollars, after paying Government tax, and all expenses in getting the cotton forward to market.

(Objected to by Mr. Hill as not the proper mode of estimating damages.)

The usual commissions for the purchase of cotton before the war was two and a half per cent. I have never purchased by com-
268 mission in the South since the war, up to sixty-eight, and I do not remember what the commission was then. I cannot give any estimate of what the time, trouble, and expense of replacing this cotton in Southwestern Georgia would have been, as I never purchase cotton except through a broker. I do not think it could have been purchased in that locality in so large a lot. I had agreed to pay interest and two and a half per cent. commission for the money—the whole amount. The whole amount of the money was raised, and ready to be forwarded as wanted.

(All and each portion of this testimony was objected to by defendants' counsel as illegal and not binding upon either of the defendants, who were not present by themselves or agents.)

Cross-examination behalf of William A. and Jeremiah Beall:

Question 1. You say you were a manufacturer of cotton yarns; who was interested with you in that business?

(Objected to by complainant's counsel as irrelevant, and especially so under this state of the pleadings.)

Answer. My brother, Richard Garsed.

Question 2. Your brother, Richard Garsed, was then also interested as a partner in the purchase of this cotton?

Answer. He was interested; we were partners together.

269 Question 3. Is he the brother referred to as being absent from your office on your arrival in Philadelphia on the evening of the fifth of July?

Answer. He is.

Question 4. Were you the only partners of that firm, and what was that firm named?

Answer. We were; the name was R. Garsed & Brother.

Question 5. These contracts were made, then, for that firm of R. Garsed & Brother?

Answer. They were.

Question 6. You say that you received a note from George Schley on the evening of the twenty-eighth of July, known as the "Glasgow letter;" did you reply to that?

Answer. I replied only by telling him how to telegraph me, as requested in that letter, viz, to one hundred and nine Ches'nut street, Philadelphia.

Question 7. Who handed you the telegram of the first of July?

Answer. I cannot answer whether it was Thomas R. Garsed or the clerk in the office of R. Garsed & Brother.

Question 8. Who is Thomas R. Garsed?

Answer. He is a brother of witness and of Richard Garsed.

Question 9. Is he employed by Richard Garsed & Brother?

Answer. He is a broker. When he sells yarns for R. Garsed & Brother he receives a commission, as when he sells for other people.

Question 10. When did the person handing you that telegram say it arrived in Philadelphia?

270 Answer. To the best of my knowledge he did not tell me.

Question 11. Do you not know it arrived in Philadelphia before the fifth?

Answer. I do not.

Question 12. Had it not been received in the office of R. Garsed & Brother before it was handed to you?

Answer. I judge it had.

Question 13. Had it not been received and read by your brother Richard before it was handed to you?

Answer. I do not know.

Question 14. Do you not know it had been received and read at the office of R. Garsed & Brother, and was handed open to you?

Answer. I beleive the despatch was opened, but by whom I do not know.

Question 15. Was it not handed to you among the papers which had been received at the office during your absence, for you to read?

Answer. I do not know that I received any papers till the seventh of July. This paper was handed to me as one of the papers received during my absence down south.

Question 16. Did your brother Richard Garsed not tell you that he had received and read that despatch?

Answer. He did not.

Question 17. How long before your arrival in Philadelphia had it been received?

Answer. I do not know.

Question 18. How long did it then usually require for a telegram to go from Augusta to Philadelphia?

271 Answer. I suppose from two to three days, usually, unless detained in Washington. Government had charge of the lines, and sometimes I had despatches detained ten days. They may have passed sometimes in one day after being sent; that is, from the date.

Question 19. Did you not receive from George Schley the telegram dated July eighth, saying "parties owning the nine-thousand-bale lot refuse to sell unless funds are here. If here to-day bargain could be closed, and probably can be on your arrival," and when did you receive it?

Answer. I did receive it, but cannot say at what date.

Question 20. Did you not receive it before you left Philadelphia for Augusta, on the twelfth of July?

Answer. I did.

Question 21. How long after your arrival in Philadelphia on the fifth of July was it before you saw your partner Richard Garsed?

Answer. I met him some time on the evening of the fifth at Frankford.

Question 22. Did George Schley in his negotiations with you touching lot number three, in Augusta, on the twenty-eighth of June, tell you who were the owners of that lot of cotton?

Answer. He did not that I remember.

Question 23. You say he showed to you the memorandum without a name, marked "Exhibit D," to Schley's answer; that memorandum

272 states that the cotton could be bought for twenty cents in greenbacks; why then did you agree to pay Schley twenty-three cents?

Answer. Because I would purchase no cotton unless reweighed and put in order.

Question 24. Your understanding of the memorandum of them was that the cotton was to be taken without being reweighed and at five hundred pounds to the bale?

Answer. That was my understanding of the memorandum.

Question 25. A memorandum of the number of bales, and the places where stored, was on the same paper when shown to you, was it not?

Answer. I do not remember.

Question 26. Did not Schley then change the contract to twenty-three cents per pound, with the cotton reweighed and put in order, for his own benefit and as his own contract?

Answer. I do not know.

Question 27. Was not that your understanding of the contract at that time?

Answer. It was.

Question 28. Did you at that time have any knowledge or information of the Bealls, or that they had any interest whatever in this cotton?

Answer. I did not know whom the cotton belonged to.

Question 29. You then dealt with George Schley, expecting to hold him responsible for it?

Answer. I dealt with George Schley as a broker.

273 Question 30. Did you not understand from Exhibit D that it was merely information of a large lot of cotton that could be bought by the buyer going to Southwestern Georgia to see the cotton and the owner, with the cash?

Answer. I did, when George Schley first handed it to me.

Question 31. From the time he handed it to you to the time you left

Augusta, the next day, do you not know the owner in Southwestern Georgia could not have been seen?

Answer. I know nothing about it.

Question 32. How much money did you get in all, in gold and greenbacks, from Robert Patterson & Co. on the sixth of July?

Answer. Twenty thousand dollars.

Question 33. How much did you send to Augusta by the next vessel that sailed from Philadelphia after the sixth of July?

Answer. I did not ship any more money myself; it was shipped by Robert Patterson & Co.

Question 34. How much money in gold and greenbacks did Robert Patterson & Co. ship to Augusta by the first vessel after the date of your telegram of the sixth of July?

Answer. I do not know.

Question 35. How much money in gold and greenbacks did you get from Robert Patterson & Co. from the sixth to the twelfth of July, 1865, inclusive?

Answer. I only received twenty thousand dollars, which was on the sixth.

274 Question 36. How much money did you bring with you when you came to Augusta on the twenty-fourth of July?

Answer. None but my travelling-expenses.

Question 37. Including the shipments by Robert Patterson & Co. and by yourself and by R. Garsed & Brother, how much money in all, in gold and greenbacks, had you in Augusta up to the twenty-fifth of July, including that day?

Answer. I had thirty thousand dollars in gold; in greenbacks, I cannot tell; do not remember. It may have been from fifty to one hundred thousand dollars.

Question 38. Including all the shipments or transportation of money, made by you or on your account, on account of these three lots cotton, how much money in gold and greenbacks was sent to Augusta up to and including the tenth day of August, 1865?

Answer. There were seventy-nine thousand five hundred and twenty-four dollars in gold and one hundred and fifty thousand dollars in currency that had arrived there.

Question 39. How much had been shipped up to and including that date that had not arrived?

Answer. I do not know; money was being shipped all the time to pay insurance, taxes, freights, charges, and putting the cotton in order.

Question 40. How did you pay George Schley for lots number one and two?

275 Answer. I paid him in gold and currency and with two drafts on Robert Patterson & Co., of Philadelphia.

Question 41. You knew by the twenty-fifth of July, 1865, that Metcalf had repudiated this pretended contract by Schley and the agency of Schley?

Answer. I knew only from George Schley; the parties refused to deliver lot number three; did not know who the parties were.

Question 42. George Schley, in all these telegrams he was sending to you touching this matter, was acting as your agent by your request?

Answer. George Schley was not my agent.

Question 43. Was he not sending you these telegrams by your request, and were you not relying on him for information?

Answer. I never authorized George Schley to send me any dispatches.

Question 44. Did you not give him information how to telegraph you?

Answer. I believe I did on the night of the twenty-eight of June, in answer to the Glasgow letter.

Question 45. Did you not act on his telegrams?

Answer. I did not, until the one to send no more money to Augusta; that the money would be wanted in New York.

Question 46. Do you now mean to say that at no time Mr. Schley had authority to act as your agent in any matter touching this controversy?

Answer. I do.

Question 47. The proceedings before the military show a great
276 many changes as to how the contract was to be performed and the money paid. Who was your agent authorized to agree to those changes?

(N. B. This question objected to by counsel for complainant. The objection is made to any reference to the proceedings before the military unless those proceedings be first produced. Mr. Hill states that he refers to the changes appearing upon the military orders and records in this case, and to the telegrams of George Schley, in the possession of witness.)

Answer. I had none.

Question 48. Did you ratify or approve any of the changes from the original contract?

Complainants' counsel objects to the question unless the changes, and by what order or proceedings they were made, be first proven. Mr. Hill repeats, "Did you ratify or approve any changes from the original contract as to the manner of performing the contract by either party."

(Complainant's counsel make the same objection.)

Answer. I did not, unless so far controlled by military authority. All I asked for was my rights.

Question 49. You stated you had other telegrams from George Schley than those already recorded. Produce them now.

(Complainants' counsel object that defendants have no right
277 to call for the production of papers without notice.)

Answer. I have no other here.

Question 50. Have Robert Patterson & Co. any interest in this cotton; and, if so, how much?

Answer. They have in the profits, but to share no losses; they have one-half interest in the profits.

Question 51. Was this interest existing from the beginning?

Answer. The interest is from the sixth of July.

Question 52. I understand you, then, that they became interested before you sent your telegram of acceptance of the sixth of July?

Answer. Yes, they became interested in the profits.

Question 53. The parties in interest, then, in these three contracts and lots of cotton are R. Garsed & Brother, and Robert Patterson & Co?

Answer. They are.

Question 54. Are they any other parties in interest?

Answer. There are not.

Question 55. Were you or the parties in interest with you ever willing to pay, or did you ever prepare to offer to pay, for cotton, in lot number three at one hundred dollars per bale, according to the terms suggested in Memorandum D?

Answer. I never was and never did. The other parties never saw that memorandum.

Question 56. Did you or either of the parties in interest with you ever offer to pay any money whatsoever to either of these defendants; and, if so, when, how much, and to whom?

278 Answer. I never did, I never, 'new them in the transaction, but

was always ready to pay for the cotton as fast as it was put in shipping order, reweighed, and bill presented through their broker.

Question 57. Did either of these defendants ever tell you he had a broker; and, if so, which one, and when and where did he tell you?

Answer. I never 'new any one in the transaction except George Schley, their broker, who furnished me the contract of sale.

Question 58. Did either of these defendants ever tell you George Schley was their broker; and, if so, when and where?

Answer. They did not, nor did I know whom the cotton belonged to.

Question 59. By what authority, then, do you call him their broker? Do you allude to it as an inference or a fact; and, if a fact, when and by whom communicated?

Answer. I only know by him offering me the cotton, as this has been my usual way of purchasing cotton.

Question 60. Did George Schley tell you, at the time he offered the cotton, that he offered it as the broker of either of these defendants; and, if so, of which one?

Answer. He did not at the time.

Question 61. Did he before the acceptance of the sixth of July?

Answer. He did not.

279 Question 62. What house or person did you employ in Augusta to ship this cotton?

Answer. I employed Robert Schley to ship it.

Question 63. Do you not know it was to be shipped by the house of E. M. Bruce & Co.?

Answer. I do not.

Question 64. Do you not know that this house was employed to ship the cotton, and that they established a branch of their house at Apalachicola for the purpose?

Answer. I do not.

Question 65. Were you never so informed?

Answer. I was not.

Question 66. Do you not know that this house was authorized by the military authorities in Augusta to ship this cotton?

Answer. I do not.

Question 67. Did you authorize or express a willingness that the military authorities should direct or appoint agents to ship this cotton?

Answer. I never did.

Question 68. Did you never give the military authorities in Augusta, or any one of them, any authority whatever touching this cotton, except the adjudication of the issue on this alleged contract?

Answer. I did not.

Question 69. Were you acquainted with a man named Grant, at that time in Augusta, a cotton buyer, in connection with the militar*ies* authorities.

280 Answer. I never 'new such a man.

Question 70. Were you acquainted with the house of E. M. Bruce & Co.?

Answer. I was in their office in Augusta by invitation only once.

Question 71. Did you ever authorize any person to say previous to the adjudication of the case by the military that you would compromise this claim with Metcalf?

Answer. I never did.

Question 72. Did you not tell General Grosvener that you would compromise it, and for one hundred thousand dollars?

Answer. I did not. I never told him I would compromise it, nor did he ever ask me, or mention such a question to me.

Question 73. Did you ever say so to Schley or other person before the adjudication by Grosvenor.

(Complainants' counsel objected to so much of the foregoing question as is included in the words "or other person," because neither the person, time, nor place are named.)

Answer. I did not.

Question 74. You have seen the letters referred to in the testimony of the witness Grosvenor—the one dated the sixteenth of February, 1866, purporting to be from General Steedman to said Grosvenor, the other the said Grosvenor's reply thereto. Were the originals of these
281 letters ever in your possession; and, if so, where did you receive them, and from whom?

Answer. I may have had those letters; I cannot say when I received them or from whom.

Question 75. To whom did you send them or deliver them?

Answer. That I do not remember. I believe Willis, of South Carolina, saw those letters in my possession, if they are the same letters.

Question 75. Did you not deliver them to Willis?

Answer. I do not remember.

Question 77. Did you not go to Ohio to see General Grosvenor, to get that or a like letter?

A. I did not.

Question 78. Did you get no letter from General Grosvenor in Ohio?

Answer. I did not at my visit to Grosvenor's house.

Question 79. Did he not send you a letter? Was not the purpose of your visit connected with a letter?

Answer. General Grosvenor has written me many letters. Such was not the purpose of my visit.

Question 80. Did you not know of these letters, and was it not the purpose of these letters to influence or alarm the parties into a compromise or settlement or payment of money in this case?

Answer. I did know of these letters; I had nothing to do with the writing of these letters.

Question 81. Did you not know the *the* letters were so used?

Answer. I did not, and was not so informed.

282 Question 82. What was your purpose in showing these letters to Willis, of Charleston?

Answer. Willis saw those letters in my possession. Willis had often talked about a compromise in this case, and I showed him these letters among other papers, and he could use them as he thought proper.

Question 83. Did you not instruct Willis to show or deliver those letters to your counsel, or one of them, in this case?

Answer. I did not.

Question 84. Was Willis to use those letters according to his own judgement, or in connection with your counsel?

Answer. He could use them as he thought proper.

Question 85. Was Willis authorized by you to negotiate a compromise in this case?

Answer. Willis wrote me frequently that he could compromise this case, and I told him that I was willing to hear from the other side; that I had no terms to offer.

Question 86. Did you not then put these letters in his possession to induce an offer.

Answer. I did not expect that these letters would be used for that purpose, nor do I know whether he copied the letters.

Question 87. Did you receive these letters, or either of them, from General Steedman?

Answer. I do not remember; I do not remember ever to have met General Steedman but once after I left Augusta, and I think that was in New York.

283 Question 88. From whom could you have received these letters except from General Steedman or General Grosvenor?

Answer. I cannot answer that question; I do not remember from whom I received them.

Question 89. For what purpose could you have desired those letters, except for the purpose of inducing a settlement?

Answer. I do not know that I had any.

Question 90. Were you not engaged with General Grosvenor in efforts to create the impression that he was renewing the charges of bribery in the War Department at Washington?

(Complainants' counsel objected to this question, because it involves an admission that General Grosvenor was trying to create an impression that he was renewing the charges of bribery, &c. The word "his" being erased, the objection was withdrawn.)

Answer. I was not.

Question 91. Did you not endeavor to procure the passage of an act by Congress to give validity to these military judgements?

(Complainants' counsel objected to this question, because it can have no bearing upon the relief sought in this proceeding w'ether he did or did not.)

. Answer. I have conversed with the member of Congress from
284 my district, if such an act could be passed legalizing military courts when there was no other courts in existance.

Question 92. Do you not know, or were you not informed, that the charges of bribery were never, in point of fact, refiled or renewed before the Department at Washington?

Answer. I know nothing about the charges, and never made any enquiry, and was never informed.

Question 93. Do you not know, in point of fact, or have you never been so informed, that the letter of the twenty-fourth of February, 1866, from General Grosvenor to General Steedman, was never really sent to General Steedman?

Answer. I do not know anything about this letter, whether it was sent or not.

Re-examined:

Witness, upon reading over his cross-examination, desires to explain the answer to question 12 by adding "but I do not know."

Question 27, the answer to be changed, on reflection, to "I know nothing about it."

Question 1. Did you understand by the term reweighed that the cotton was to be put in shipping order?

Answer. I did.

Question 2. Did you not know that Mr. Schley was selling this
285 cotton, not as his own, but as a broker?

Answer. I did know it from Schley's own statements.

(The previous question objected to as leading.)

Question 3. Schley changed the proposition. What reason have you to suppose that he changed the proposition for his own benefit, and not for that of his principals?

Answer. When Schley first offered me the cotton, he wanted me to buy it at the warehouse where stored, and the condition it was then in, only to be reweighed. The condition I found the other cotton in, being damaged by water, I refused the proposition, unless picked and put in order, as a great many of the bales in Schley's gin-house and De Laigle's field were rotten part of the way through the bales. And I know the change was not made for Schley's benefit.

Question 4. For what reason, then, was the price raised from twenty to twenty-three cents a pound?

Answer. That I would have nothing but merchantable cotton, and for this I was willing to pay the three cents per pound.

Question 5. Then you preferred your offer at twenty-three cents to the original offer at twenty cents contained in the original memorandum?

Answer. Yes, I did.

286 Question 6. Had you any other reason than your preference for accepting the last proposition, D D, rather than the proposition D?

Answer. I had none.

Question 7. Was there any inducement or representation made to you by George Schley that there was more personal advantage to him, as distinguished from his principals, in the latter than in the former proposition?

Answer. He made no remarks on that subject to me.

Question 8. What reason, if any, have you for believing that the despatch of the first of July had been opened before it was handed to you?

Answer. I have none, and I do not know whether it was opened?

Question 9. Why did you say on the cross-examination that you believed it had been opened?

Answer. I cannot say, unless I spoke in a hurry.

Question 10. Were despatches that had been received during your absences and long before your return usually handed to you open?

Answer. They were.

Question 11. If this despatch had been received long before your return, it would probably have come to you which way—open or unopened?

Answer. Opened.

Question 12. If it arrived after your return, it would probably have come to you which way—open or unopened?

Answer. Unopened had I been in the store.

Question 13. Would your clerk have opened it had you not been in the store?

Answer. He would not, but either of my brothers would.

287 Question 14. Have you any memory on the point w'ither it came to you opened or unopened?

Answer. I have not.

Question 15. Was your first knowledge of that despatch derived from the despatch itself or from your being told of it by anybody?

Answer. From the despatch itself.

Question 16. And you first saw it when, and at what time of day?

Answer. On the seventh of July, and I do not remember at what time of day.

Question 17. How long were you in company with your brother Richard in all, after your arrival in Philadelphia, before you received this despatch?

Answer. I do not remember. I remember meeting him on the evening of the fifth of July, but do not remember w'ither I saw him on the sixth

of July or not. On the evening of the fifth I was only with him a few moments.

Question 18. Where were you when you received the despatch?

Answer. At our office, 109 Chestnut street, Philadelphia.

Question 19. If your brother Richard had seen the dispatch before you saw it, would he probably let you pass so long as one day without notifying you of it?

Answer. I think he would not.

The questions on the re-examination are objected to by defendant's counsel as leading, speculative, irrevelant, and as between third
288 parties not in presence of defendants.

Recross-examination by the counsel of Bealls:

Question 1. Since you gave the answers to the cross-questions, which you have been modifying by *by* the re-examination, the commission has taken a recess to dinner.

Answer. It has.

Question 2. During that recess, were you not in consultation with your counsel, touching the answers you had given, and the effect of them?

Answer. Before I left this room, at the recess, I remarked to the examiner that there were two answers that I wished to change. I dined with my counsel, and consulted with them.

Cross-examined by counsel of Metcalf:

Question 1. Did you purchase this cotton on speculation or for consumption at your factory?

Answer. For consumption at our mills.

Question 2. What is the ordinary monthly consumption of cotton at your mills?

Answer. From five to six hundred bales.

Question 3. You purchased, then, and received about five months' supply?

Answer. Had we used it all. A great deal of this cotton did not suit our works; these lots we sold.

Question 4. How then could you find it necessary to purchase
289 nine thousand bales for ordinary consumption?

Answer. This cotton was to be used at the mills of R. Garsed & Brother and Robert Patterson & Co., and any cotton which did not suit the mills of either was to be sold in the market, as there were all grades of cotton in the purchase.

JOHN GARSED.

Testimony of Robert Patterson.

ROBERT PATTERSON, who, having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

I reside in Philadelphia. My occupation is that of a manufacturer and merchant. Early in July, 1865, I think the sixth day, Mr. John Garsed came to my chamber, wh re I was confined by sickness, showed me some papers he had brought with him from Georgia, relating to several lots of cotton, one lot exceeding two thousand bales at Augusta, another of six hundred at the same place, one of eleven hundred at Americus, one of thirty-five hundred and twenty-two

290 at Albany, another of twenty-five hundred and fifty-six at the same place, another of eleven hundred and ninety-four at Dawson, and another of fourteen hundred and six at Eufaula, Alabama, stating to me the terms upon which this cotton was proposed to be sold to him, and desiring to know if I would furnish the money to pay for it, which I agreed to do, the operation being one strictly in the line of my business as a commission merchant engaged in the sale of cotton for over thirty years.

The Exhibit' DD and E, attached to Schley's answer, are copies of the originals shown to me at that time by John Garsed.

I was ready, at all times, to furnish all the money required to fulfil the contract, and did raise all that was used; that is, what paid for lots one and two, and one hundred thousand dollars besides.

I sent the money and paid drafts to the above amount. I sent the money that was sent by Adams' Express; there were several remittances. The express companies, I think, would not send more than twenty thousand dollars per day. I furnished it as fast as the express company would take it, or as it was wanted. The balance of the 291 money required to fulfil the contract I was prepared to deposite in the bank indicated, or to send here, as might be required. In my various factories I consume about one thousand bales per month, when full running about twelve hundred bales. The understanding was that the Garseds were to be supplied with such cotton as suited their mills, and my mills were to be supplied in the same manner, each being charged with the market-value of the cotton on the day of delivery to each. The cotton which suited neither was to be sold and the proceeds accounted for, the profits to be equally divided between Robert Patterson & Co. and R. Garsed & Brother at the close of the transaction; but Robert Patterson & Co. were to share no losses. They were to have two and a half per cent. commission, the usual commission and legal interest for the money advanced. My great consideration was the getting the cotton for my mills. The commissions were no consideration at all. To a person of fair credit to raise this amount of money, it would have cost, with undoubted securities, ten per cent. for the 292 six months during which he would have had to carry it; but to a person of doubtful credit double that amount; to a person of undoubted credit less, say one and a half per cent. per month.

The firm of Robert Patterson & Co. consisted, in eighteen hundred and sixty-five, of myself alone, and does so still. The firm of R. Garsed and Brother consists of Richard Garsed and John Garsed. All of both firms are residents of Philadelphia and citizens of Pennsylvania.

Cross-examination on the part of William A. and Jeremiah Beall:

Question 1. I understand you to say, then, that the inducement for you to advance the money to pay for this cotton was the fact that you were thereby getting cotton for your mills, and not the commission or legal interest?

Answer. As already stated, my principal inducement for advancing or agreeing to advance so large a sum of money at six per cent., when it was worth twelve, was to obtain a supply of cotton for my own mills on favorable terms, and to render an equal service to the Mess. Garsed, for whom I had a very strong regard, and not for the commission alone, as I could only get one commission in many months, when, if I put the money into other operations, I could turn it over once a month, 293 and make a commission each month.

R. PATTERSON.

Re-examined:

I did not see the telegram of July first, or hear of it, certainly not before I made the arrangement with Garsed on the sixth. About that time telegrams were very irregular in their reception at Philadelphia, so much so that I wrote to Mr. Garsed to cease using them, according to my present impression.

R. PATTERSON.

294 *Examination of William C. Jones.*

WILLIAM C. JONES, who having been by me first cautioned and sworn to testify *to* the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

Sometime in July—in the early part of July—eighteen hundred and sixty-five, Mr. Metcalf, in conversation with Mr. James Gardner, at his office, and with myself, mentioned that he had a large lot of cotton in Southwestern Georgia, probably about ten thousand bales; I do not recollect the exact amount; said he would like very much to have it in Augusta. I told him I thought it could be arranged, through Mr. Wallace, president of the East Tennessee road, and that I would endeavor to have it done, as I was well acquainted with Mr. Wallace. He remarked that he would give some twelve or fifteen dollars per bale to have it delivered in Augusta.

The next day I commenced a correspondence with Mr. Wallace's son, who had charge then of the East Tennessee trains, relative to his taking the contract. I think it was probably ten or twelve days before
295 Wallace could arrange with the other roads to let it pass over. I then received either a telegraphic despatch or a letter from Charles Wallace, telling me that he thought the arrangement could be completed in a few days. I so informed Mr. Metcalf. His answer to me was that he had sold the cotton, or that the cotton was sold, but he presumed the parties purchasing would like to make the same arrangement. He did not name the purchaser. My impression is he said that most of it was at Albany. Metcalf transacts his business generally through an agent, I believe, but cannot speak from my own knowledge. I can say for myself that I have had several transactions with Mr. Metcalf, but always directly with him.

WM. C. JONES.

Examination of James W. Stinchcomb.

JAMES W. STINCHCOMB, who having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

Sometime in July, eighteen hundred and sixty-five, or in the
296 fore part of August, Mr. Metcalf said to me that Mr. Schley had sold a large lot of cotton for him; the amount I do not remember exactly. My best recollection is that it was from twelve to fifteen thousand bales. A portion of it was in Augusta, Georgia, another portion in a town called Americus or America; I think it was Americus. Another place at which I remember a portion of it was Eufaula, or Eufoley, or some such place in Alabama, and two or three other places; I cannot call to mind their names. I understood him to say that Mr. Schley was interested in the Augusta cotton, and a Mr. Beall or Bealls—

I don't remember which—were either interested in all the balance or a portion of it, and I cannot remember which. That he had sold too early. Cotton was now on the rise, and that his idea of the law was that he could refuse to deliver the cotton, pay the difference between the contract price and the price on the day that he was to deliver it. He then asked me if that would be such a compliance with his contract as would be sanctioned by the military authorities. I told him I supposed it would. Within a very short time after this conversation took place
297 we had another conversation in substance the same as that I have repeated.

I was at that time acting as principal clerk in the office of the provost-marshall-general of Georgia. I reside in Logan, Hocking County, Ohio. My occupation has been practicing law, since eighteen hundred and forty-eight, except during the war. I am not able to say whether he used the name of the person to whom the cotton was sold, or w'ether he said a Philadelphia man. I am not able to state w'ether these conversations were before or after Garsed had presented his claim to the provost-marshall-general, but my impression is that the first conversation took place during the time that General Steedman and General Grosvenor went to Macon. I believe it was to meet the governor of the State.

J. W. STINCHCOMB.

298 *Examination of George L. Cope.*

GEORGE L. COPE, who having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

I reside in Savannah, and my vocation is that of a general commission merchant, cotton trade being a branch of it. I was engaged in that business in July, August, September, and October, eighteen hundred and sixty-five. The quotations of the cotton market in Savannah were, on July sixth, for middling cotton, thirty-five cents per pound; July fourteenth, forty-two cents per pound; on July twenty-second, forty-five to forty-seven cents per pound; August second, forty-two cents; August eighth, forty-two to forty-three cents; August nineteenth, strict middling cotton, thirty-six to thirty-eight cents; on August twenty-third to August thirtieth inclusive, strict middling cotton, thirty-eight to forty cents; September second, mid'ling cotton, thirty-five to thirty-six cents; September thirteenth, good middling, two grades above mi'dling cotton, thirty-eight cents; September twentieth, good middling cotton, forty-four cents; September twenty-
299 sixth, mi'dling cotton, thirty-eight to thirty-nine cents. Strict mi'dling cotton is one grade above middling.

The cottons grown in Southwestern Georgia I am acquainted with. They are not considered as good as those grown in Middle Georgia. To a person who desired it for a particular purpose, the cotton raised in Middle Georgia would be worth half a cent a pound more, from being better handled and of better staple, but to a general buyer there would be no difference in value. To a careful buyer the cotton of Middle Georgia would be worth a half cent per pound more than that of Southwestern Georgia.

During the time above stated the Augusta market was usually five or six cents per pound lower than the Savannah market, freights and insurance being very high. I do not know the comparative prices in Southwestern Georgia at that time.

Cross-examined:

I do not know the value of cotton in Southwestern Georgia at that time. Transportation was so difficult between Southwestern
300 Georgia and Savannah that no cotton was brought that way, though it might perhaps have been brought by way of Aulanta and Macon, but it would have been attended with great expense. Mid'ling cotton was worth in Savannah, on the twenty-eighth of June, 1865, I know not what. There were but few bales brought in up to that time. I am unable to give quotations previous to the sixth day of July.

GEO. L. COPE.

TESTIMONY ON THE PART OF THE DEFENDANT.

Jeremiah Beall.

JEREMIAH BEALL, who having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

I reside in Mille'geville, Georgia. I was a cotton-planter in Southwestern Georgia in eighteen hundred and sixty-five, and many years previously. I am one of the defendants in this bill. In the fall of eighteen hundred and sixty-one I made a mere verbal arrangement or had a
301 mere verbal understanding with Mess. Doughty, Bealls & Co. and T. S. Metcalf for the purchase of cotton in Southwestern Georgia. I went down into Southwestern Georgia in the month of November of that year, and commenced purchasing cotton at Albany. I had about thirty thousand dollars of my own funds, of which the other parties had notice, and the understanding was that I should go on and purchase with my own funds first. The money, after that was exhausted, was furnished me by my brother, William A. Beall, who, with the firm of Doughty, Bealls & Co., negotiated all the loans that I used that winter for the purchase of cotton. That winter the bulk of the purchases were made, continuing up to May, eighteen hundred and sixty-two. These purchases were made at Albany, Dawson, Eufaula, and some small lots at one or two other places, Cuthbert and Fort Gaines. I came up the country that summer. Sometime during that summer I received a letter from my brother, W. A. Beall, asking me to send him a transcript of all the cotton from my books, where it was stored, the number of bales, and the average price, stating as a reason that his partner (Mr. Doughty) had become very much alarmed at the condition
302 of the country, and manifested a great disposition to dispose of his interest, and had offered it to him. I sent him that statement, and advised him to make the purchase, and the purchase was made.

I returned to Southwestern Georgia in the fall of eighteen hundred and sixty-two, and recommenced the purchase of cotton, the funds being supplied me by my brother (W. A. Beall) in the same way. Cotton then had advanced, and during that winter I bought sparingly. I remained there until about the same time as in the previous year, and came up the country.

In the month of August, 1863, I was in Augusta. Mr. Metcalf said that he had a large amount of money at his credit at the bank, and proposed to pay off the loans which my brother had negotiated at the banks, saying at the time that he supposed that we (meaning myself and brother) had as soon pay him the interest as the banks. He did

take up these obligations, and we gave him our note (my brother and self) for the amount—about four hundred thousand dollars; a little over; I do not remember the odd amount. I returned home, and in the course of sixty or ninety days cotton had materially advanced, and
303 I commenced selling, the proceeds of which sales were sent down to Augusta to the payment of this note. The first sale was made to Governor Brown, and for the State of Georgia. I afterwards sold a large lot to John P. King, president of the Georgia Railroad, the proceeds of which were also applied to the payment of this note. I sold some other lots, and continued to sell until the debt was extinguished, except what was due to myself for the advances I had made, and continued to make, of my own funds, then amounting to some one hundred and seventy or eighty thousand dollars, which the parties agreed to let remain, and a few other small debts. All of the cottons were purchased in my own name; receipts, bills, and everything appertaining to them were in my own individual name, and all the policies of insurance were likewise in my name, and I had the whole possession and control of the cotton, which was stored in my individual name; and all the sales of the cotton had been made by me; bills of sale in my name and the receipts turned over, and no one of the firm (the parties I mean) had
304 any authority to sell, or in any manner dispose of *of* it or any portion of it. At the time of the first verbal understanding it was agreed that I should have the full control of the cotton, the disposition of it, sales, et cet'ra, and to account to them for their interest, they at the same time saying that they did not wish their names to be known in any manner in the transactions.

Their interest was only a silent one, that is, the interest of Doughty, Beall & Co. and of Metcalf. Metcalf especially enjoined upon me not to let his name be known in the transaction. I refused to go into the arrangement unless I had the sole and whole control of the transaction. I had the warehouse receipts, they were in my name, and never went out of my possession, except as hereinafter mentioned.

The cotton at Americus was bought by Furlow, in the name of my brother, W. A. Beall. In that cotton I had no interest.

I had been absent from home in the summer of eighteen hundred and sixty-five on business, and on reaching home I found a letter from my brother, W. A. Beall, desiring me to come down to Augusta immediately, I did not know for what object or anything of the kind.
305 The letter was dated some time in August. I think I got a horse and buggy and rode over to the railroad, and when I reached Augusta I then learned for the first time from my brother, Judge Gould, and T. S. Metcalf what had occurred or transpired in relation to the cotton, the release of Metcalf, and other things connected with it. I visited Mr. Metcalf at his house, found him very much agitated, frightened, and alarmed, so much so that I could not induce him to come out of his house into the street, and when I confronted him in regard to the sale of this cotton he positively assured me he had made no such sale as that pretended to be set up by George Schley; that he had no authority to sell the cotton, and all he said to Schley was that there was a large lot of cotton held and owned by a planter in Southwestern Georgia that he thought might be bought if the money was in hand. That he would sell no cotton without money. I had various conversations with him upon this subject, and of his being put in jail, and on one occasion he remarked to me if he had remained in jail twenty-four hours longer he should have died, and sooner than be arrested again and
306 put in jail he would surrender almost *almost* everything he had; at

the same time he stated to me his fears that the cotton in the hands of the Schleys and the military would all be swamped, and we should never get anything.

I filed with General Steedman a protest against the sale of this cotton, and that so far as I was concerned I did not intend to submit to it; and I particularly charged my brother, W. A. Beall, to take no steps that would compromise me in this matter. When I was in Augusta on this visit, my brother said he might have some use for the cotton receipts, and having my books and papers with me, I left them with him, he saying that his safe was more secure than my house; and it was at this time that I told him to take no steps to compromis' me in this matter, not intending to give him any authority over the cotton, both of us determining that we would not submit to the sale. I did not then, or at any other time, consider the cotton receipts out of my possession, but left them there subject to my own order. I never gave Metcalf, or Schley, or anybody else any authority to sell this cotton, and have never ratified anything done by them, or pretended to have been done
307 by them in connection with this matter. I confess I never was more surprised in my life than when, on reaching Augusta, in August, 1865, I heard what had occurred.

Cross-examined:

Question 1. How was the money raised, which you spoke of as having been raised and sent to you by Doughty, Beall & Co., to purchase this cotton?

Answer. That money was raised on the credit of Doughty, Beall & Co. alone, and afterwards by W. A. Beall, when he purchased Doughty's interest.

Question 2. Where was it raised, and how?

Answer. In Augusta, on their checks upon the banks, for which at their weekly settlements with the banks they gave their notes. These notes were without endorsement. This I learned from the parties and from inspection of the notes, when I afterwards saw them.

Question 3. Were those notes passed due when you went down to Augusta, in 1863?

Answer. Some of them were, and some were not.

Question 4. In which bank were these notes principally?

Answer. At the Mechanics' Bank, where Doughty, Beall & Co. did their business, and some at other banks.

Question 5. Have you any recollection what portion of the
308 whole amount was at other banks?

Answer. I do not remember; but there was one debt at the Bank of Hamburg for one hundred thousand dollars.

Question 6. Was that debt at the Bank of Hamburg embraced in this settlement with Metcalf?

Answer. I do not remember.

Question 7. Was not Thomas S. Metcalf president and principal owner of the Mechanics' Bank?

Answer. He was, and managed and controlled it.

Question 8. When did you first ever hear of this alliged sale of cotton by George Schley to Garsed?

Answer. On the very day that I reached Augusta, after the release of Metcalf. That was the first time I ever heard of the sale from anybody.

Question 9. When was this cotton shipped by you? Did you sell it in the State of Georgia; if so, when? If not sold in the State, when did you ship it out of the State?

Answer. I commenced shipping this cotton in connection with Joseph H. Metcalf, a nephew of Thomas S. Metcalf, as a clerk under me, he attending at some places and I at others, in the months of February,
309 March, and April, eighteen hundred and sixty-six; perhaps we did not begin till March—yes, I can say positively March, April, and May; that will include the whole. The cotton was shipped over the road to Augusta, thence to Savannah to Fraser, Trenholm & Co., Liverpool. That at Eufaula, down the river by Apalachicola Bay, to the same parties. None of it sold in Georgia, except as heretofore stated, in eighteen hundred and sixty-three.

Re-examined:

I think it was on the thirty-first of July, eighteen hundred and sixty-five, I closed a sale of three thousand bales of this cotton to Dufuld & Co. Mr. Glenn was a member of that firm. I could not deliver the cotton to them, from the fact that soon after the sale a military guard was placed around the warehouse, with orders not to allow one bale of the Beall cotton to go out of the warehouse. The price was thirty cents per pound. After the sale was made, I was informed that this restriction had been put upon the cotton. I afterwards met Dufuld & Co. They, in the mean time, had also heard of the guard being placed around the cotton; and, after talking the matter over, we agreed mutually
310 to rescind the trade. I did not then know why the military guard was placed over the cotton, nor did I know till I reached Augusta.

The cotton was not all shipped to Fraser, Trenholm & Co. About seven hundred bales of it was seized by the Treasury agents. I traced this cotton—a portion of it—to Liverpool; another portion to Boston, and another to New York. In the transshipment of the cotton they changed all the marks and brands; bagging and rope from a large portion of it were stripped, and new bagging and rope put on and remarked in a different mark. That which was shipped to New York I followed and had identified, and recovered two hundred and sixty-six bales. That was shipped to Simeon Draper, of New York. I recovered that portion of the cotton simply by having learned the ship it was shipped by.

From the proceeds of the cotton shipped to Fraser, Trenholm & Co. we have realized (myself and brother) only two dividends, amounting, together, to five shillings in the pound, declared by the inspectors of the estate of Fraser, Trenholme & Co., who went into bankruptcy, which amount does not cover the sums due me for advances made, and previously referred to.

In Southwest Georgia, where this cotton was stored, about the
311 twenty-eighth of June, eighteen hundred and sixty-five, mid'ling cotton was worth about eighteen or twenty cents per pound; about the first day of July, I think the price was about the same; about the sixth, eighth, or tenth of July, cotton began to advance in the country generally, but think it did not begin to rise in Southwest Georgia before the middle of July, shortly after my sale to Dufuld & Co. I think in August Jordan sold his whole crop of thirty-two hundred bales at twenty-eight cents per pound. About the same time old man Wiley sold his crop for fifteen cents in gold per pound, as I learned from the warehouseman who sold it. During the month' of August and September, cotton sold in Southwest Georgia at from twenty-seven to thirty cents per pound.

J. BEALL.

Recross-examined:

Question 1. Were the three thousand bales sold to Dufuld & Co. a selected lot?

Answer. They were not a selected lot, except only that they were to be taken from all the cottons in lots from Simms & Rust's warehouse in Albany. This cotton was not insured, and that was my reason for selling from this lot. They were to take it in crop-lots.

312 Question 2. Was the cotton in Simms & Rust's warehouse better, worse, or an average with the rest of the nine-thousand-bale lot?

Answer. They were all about even-running lots.

Question 3. Did you ever see the lot at Americus, and what was its quality?

Answer. I occationally saw Furlow buying it, and think it was about the same quality as the rest of the nine thousand bales.

Question 4. Was not cotton relatively lower in Southwestern Georgia in August and September, eighteen hundred and sixty-five, at Albany, Eufaula, and Americus, than in any other portions of the State?

Answer. It was, on account of the great difficulty of transportation.

Question 5. Was not that difference greater than the cost of transportation?

Answer. I don't think I can say it was.

Question 6. Were not the prices there very irregular?

Answer. I think they were to some extent.

J. BEALL.

Examination of William A. Beall.

WILLIAM A. BEALL, who having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

I reside in Augusta, Georgia, and am one of the defendants in
313 this case. In the fall of eighteen hundred and sixty-one, during the visit of my brother, Mr. J. Beall, to Augusta, there was a verbal agreement between him, (J. Beall,) Thomas S. Metcalf, and Doughty, Beall & Co., to purchase cotton in Southwestern Georgia, and it was understood that Jeremiah Beall would proceed to that locality, which he did, and make the purchases in his own name, arrange for the storage, insurance, and take control and management of the purchases generally. The funds for the purchase of this cotton were to be negotiated for and raised by Doughty, Beall & Co., and to be forwarded from time to time as they should be needed or wanted. J. Beall did proceed to make these purchases, and continued from the fall of eighteen hundred and sixty-one till the spring of eighteen hundred and sixty-two, the month of May, I think (Doughty, Beall & Co. furnishing him in the mean time with all the funds for the payment of these purchases of cotton, except thirty thousand dollars, or thereabouts, advanced by J. Beall.) During the same period, say from the fall of eighteen hundred and sixty-one to the spring of eighteen hundred and sixty-two, it was agreed by T. S. Metcalf and myself to make a similar purchase of cotton at Ameri-
314 cus, Georgia, Metcalf not being known in the transaction, I to arrange for the funds, and to have the cotton purchased in my own name. The purchases at Americus in that period above stated were between twenty-two and twenty-three hundred bales, twelve hundred bales of which were subsequently burnt, leaving about eleven

hundred bales in the warehouse of Price, which cottons were stored and held in my name, and subject to my control and management. In the summer of eighteen hundred and sixty-two my copartners in Augusta, the Messrs. Doughty, manifested a disposition to sell their interest in the cottons bought by J. Beall in Southwest Georgia, for the account of T. S. Metcalf, J. Beall, and Doughty, Beall & Co., and made a proposition to that effect, which, after some consideration, I and T. S. Metcalf accepted and bought out their interest. During the following fall, (that of eighteen hundred and sixty-two,) J. Beall returned to Southwestern Georgia, and continued the purchase of cotton for the account of T. S. Metcalf, J. Beall, and myself. He continued to purchase sparingly
315 till the spring of eighteen hundred and sixty-three, the money to pay for the purchases being raised and furnished by myself.

Some time during the summer of *of* eighteen hundred and sixty-three—perhaps in the month of August, I am not certain, but believe in the month of August—T. S. Metcalf proposed to take up the indebtedness of Doughty, Beall & Co. and William A. Beall, for those purchases, saying that we had as well pay him interest as the bank. Myself and J. Beall acceded to this proposition, and gave our joint note for some four hundred thousand dollars in favor of Metcalf. Subsequently, in the course of sixty or ninety days, my brother, J. Beall, made sales of cotton to the amount of fifteen hundred or two thousand bales, with the proceeds of which this debt of four hundred thousand dollars was liquidated.

The cotton remaining after these sales remained in the warehouses till after the surrender, in eighteen hundred and sixty-five. I was out of business, and lived about three miles out of the city of Augusta. I had no office in Augusta, but received my letters and papers at Metcalf's office, w'ere I usually called every morning for that purpose, and
316 used his desk for any writing I had to do; consequently I could be seen there almost any day when in the city, and very frequently could be seen in the city arm in arm with Metcalf. (Metcalf had that habit of arming people.) About the twenty-eighth or twenty-ninth of June, eighteen hundred and sixty-five, Metcalf remarked to me that George Schley had said something to him in reference to a party here (in Augusta) from Philadelphia wanting to purchase our lot of cotton, (meaning this lot,) and spoke about giving time, or a refusal for a certain length of time, which I very promptly objected to, and said to him under no circumstances and at no reasonable price would I give any party or parties the refusal or time; that the purchaser must be here with the money ready before I would entertain any proposition for the sale.

It was always understood between myself and Metcalf that we would make no sale of these cottons without consulting and getting the consent of J. Beall.

Question. State what you meant when you said the purchaser must be here with the money before you would entertain a proposition. Did you mean to recognize thereby authority in you or Metcalf to entertain a proposition to sell the cotton, or did you mean to say that your
317 consent, as far as your interest went, could only be secured to a sale by the cash being here?

(Objected to by complainants' counsel as leading.)

Answer. If a proposition had been made, the cash being here, I would have entertained it, with the understanding that there was another party in interest who was absent, and who would have to be consulted before a final answer could be given to any proposition. Metcalf then

I think, drew up a kind of memorandum. I believe it is the one of which a copy is annexed to George Schley's answer, marked "D," which I considered merely a memorandum for information handed to some outside party. There was at that time, I think, a memorandum of the number of bales and their locality added by me. This was not intended as an offer of sale. If the terms should prove agreeable to any purchaser, he was to go to my brother, in Mille'geville, who was the large planter referred to in the memorandum as owning and having bought the cotton, to make the purchase. I had no conversation with
318 George Schley whatever. He was not my agent, he was not my broker.

I think it was on the last day of June or the first day of July I was informed, on my arrival in the city of Augusta from my place of residence, by Mr. T. S. Metcalf, on the sidewalk in front of his office, as follows:

He came up to me, apparently in some agitation, and said, "What do you think?" My reply was, "I don't know what to think; I might think a heap of things, but what is it?" His reply was, "George Schley tells me that he has telegraphed to Garsed, of Philadelphia, offering him our lot of cotton, and giving him to the sixth of July to accept or refuse." I asked Metcalf if he had authorized George Schley to do any such thing, and he emphatically denied that he had. I then said to him, "Have you seen Schley this morning?" and on being replied to in the negative, I said, "See him at once, and have him telegraph to Philadelphia and correct it." Later in the day I again met Metcalf, when he informed me that he had seen Schley, and had him telegraph correcting the misunderstanding.

I heard no more of that matter until, after the arrival of Garsed
319 in Augusta, about the last days of July, the thirtieth or thirty-first, I was informed by Metcalf that Grosvenor, who was acting as provost-marshall, I believe, had decided that that offer of Schley's to Garsed was a sale, and that he (Grosvenor) would so hold it. I asked Metcalf how he got this information, and how General Grosvenor could so decide. His reply was that Grosvenor had so told him. I asked Metcalf if he had had any hearing. His reply was, "No; and I suppose his decision was from representation made by Garsed and Schley." I then said to Metcalf that this was my first information of it; I had not been notified to appear there—had no showing; that it was all a one-sided thing, and that I believed it was a conspiracy to defraud us, and entertaining this opinion, and fearing that this decision would be followed by military orders taking the cotton out of our possession and placing it in the hands of irresponsible parties, thereby loosing the whole, it was suggested by Metcalf that we would better compromise this matter, if it could be done. This I agreed to, and Metcalf then informed me that Cohn had offered him his services to effect a compromise.
320 I said to Metcalf that I had no acquaintance with Cohn, and asked if he would be a suitable man. His reply was that Cohn was acquainted with the parties, and was quite thick and on good terms with the military.

The next day I think it was, about the first day of August, late in the evening, just before I started out home, I stepped into Metcalf's office, and found Cohn there, and spoke to him for the first time. I said to him, "Metcalf informs me that you have offered him your services in trying to effect a compromise with Garsed, in the matter of this alleged sale of cotton by George Schley." His reply was, "Yes; I have known Metcalf for some time, and I understake this matter for the regard and

friendship I have for him. I charge him nothing for my services, but if I can bring it to a satisfactory termination, and he chooses to give me anything, why, I will accept it," or something to that effect. I then left the office and went out home. The next day, which was probably the second of August, I understood from Judge Gould that he had finally, after some trouble, got a hearing before Grosvenor, and in the evening of that day I walked up to Grosvenor's office, in company with
321 Metcalf. About the time we reached the entrance, (the office was up-stairs,) Cohn drove up to a hitch-post some ten yards above the entrance of the office, and either called or beckoned to Metcalf, and Metcalf went up to him, pulling me along by the arm. We went up to him, when Cohn said to him, "I think I can have all this matter of compromise arranged and settled this evening." We then (Metcalf and myself) went up into the office, and as we entered the office Metcalf caught me by the arm, and pointing his finger at the figure of a man going out of the back way, said to me, "Why is Garsed leaving the room?" My reply was, on looking and seeing a man I took to be Mr. Garsed, "I do not know; I should think he would remain here during the hearing of this case." Metcalf and myself were present during the whole hearing; from the time we entered till the end. Judge Gould read to General Grosvenor, in my presence and that of Mr. Metcalf, the affidavits of J. S. Metcalf and myself.

Question. Did General Grosvenor make any remark as to any inconsistency between that affidavit and Metcalf's statements to him?

Answer. No; he made no remarks, nor asked Metcalf any questions, as well as I recollect. Late in the afternoon of that day,
322 after the hearing, I was in at Metcalf's office, when Cohn came in, and said for two hundred thousand dollars, ten thousand paid in hand, he could compromise this matter, have the military decision revoked, and the cotton turned over to us, and free to do as we pleased with it. I said to Metcalf, "We have not got two hundred thousand dollars." Cohn said, "Your note at ten days, secured by cotton receipts, would be satisfactory." The note was then drawn by Metcalf and endorsed by me, and handed to Cohn, with the warehouse receipts of eleven hundred bales of cotton, stored at Americus. I had at that time no warehouse receipts for any other cotton, nor had Metcalf; they were in possession of my brother J. Beall. The warehouse receipts turned over were in my own favour.

Question. State w'ether in giving this note, and in all these negotiations through Cohn, you were acting in settlement of the case with Garsed, as you understood it, or were offering or authorizing a bribe.

(Complainants' counsel object to this question, that it is leading.)

Answer. In all my negotiations through Cohn I had no other idea or impression but of settling the case.

323 Question. Was anything said to you by Cohn, or by Metcalf, or by you to either of them, on the subject of bribery; and if so, what was it?

Answer. There was nothing said on the subject of bribery by either of them to me, nor by me to them.

Question. When did you first hear of the subject of bribery?

Answer. When Metcalf was arrested and charged with it.

Question. State w'ether you knew at that time of the one thousand dollars in gold testified to by General Grosvenor?

Answer. Metcalf told me, but w'ether at that time, or before, or since, I do not remember, that he had given Cohn one thousand dollars in gold.

Question. State when you first heard of the note addressed to "Cap-

tain K.," and signed "G.," which General Grosvenor testified he had given to Capt. Keller?

Answer. The first time I ever saw that note, or heard of it, was when it was produced by General Grosvenor at this investigation.

Cross examined:

(The complainants' counsel object to *to* all the conversations between Jeremiah Beall, William A. Beall, T. S. Metcalf, and L. Cohn,
324 having no relation to the offer made by Schley to Garsed or the original terms of the contract for the purchase of cotton, as illegal.)

Question 1. Where and how did you raise the money to buy the twenty-two hundred bales of cotton referred to as at Americus?

Answer. I raised it in Augusta, Georgia, on my individual note, at one day at the Merchants' Bank.

Question 2. Was Mr. Metcalf the president of that bank, and did he have a controlling direction of its affairs, as far as you know?

Answer. He was the president of the bank, and exercised a very great influence in its management.

Question 3. Did you include the eleven hundred bales of cotton at Americus in the memorandum alluded to as "D" annexed to Schley's answer?

Answer. I do not recollect.

Question 4. Could you have made the nine thousand seven hundred and odd bales, known as the nine-thousand-bale lot, without including these eleven hundred bales?

Answer. No; I think not.

Question 5. You stated that you would have received no proposition, relative to the sale of the nine-thousand-bale lot, unless the money had been in Augusta. Did you expect payment for the cotton before the delivery from any person to whom you might sell?

325 Answer. I certainly did, and would have required it. It is the custom in Augusta, and has been as long as I have any knowledge of the business there.

Question 6. Do I understand you to say that it is the custom in Augusta to demand payment in Augusta before the delivery of cotton in a remote part of Georgia?

Answer. That would depend upon the trade. There are not enough such sales to make any custom; cottons sold in Augusta, that are in Augusta, are paid for before delivery.

Question 7. Then that custom does not apply to sales made in Augusta of cottons that are in remote *remote* parts of Georgia, as I understand you?

Answer. It applies to all the sales that I have made or known myself.

Question 8. Is not the custom that the payment and delivery are simultaneous acts?

Answer. No; it does not follow. Cottons are frequently paid for and remain in the warehouse for months before delivery.

Question 9. Do you mean by that that the cotton remains in the warehouse the property of the seller?

Answer. No.

Question 10. It simply m'ans, then, that people sometimes buy cotton without changing the place of storage, does it?

Answer. It m'ans that it is the custom in Augusta, when a factor
326 sells cotton, he makes out his bill, presents it for payment, and the buyer can do with his cotton what he pleases—leave it in the warehouse, restore it, or ship it.

Question 11. Then there is no credit given either for the money or the delivery?

Answer. There are five days given to the buyer, *to* free of charge, to remove his cotton.

Question 12. Is the distance from Augusta to the nearest point where any of this cotton was stored over one hundred and fifty miles?

Answer. It is.

Question 13. Is the paper now shown you in your handwriting?

Answer. It is, I think. I made this, or one similar to it, as a memorandum for myself. I do not recollect what I did with it.

Question 14. Do you state that this is not the memorandum that was attached to paper D?

Answer. It is not. On that paper the number of bales was merely given. On this there seems to be the weights, and some calculations. I recollect no other variation *on* the other paper. I do not recollect if the Americus cotton was set down, but only judge so from the number of bales.

Question 15. Were not the places where the cotton was stored set down on the memorandum attached to "D?"

Answer. They were, I think.

327 (The paper offered to witness is annexed, and marked "O O, Joseph P. Carr.")

Question 16. When did you know of Schley's connection with this matter? Did you know that this memorandum D was going into his hands?

Answer. About the twenty-eighth or twenty-ninth of June, I knew that Schley had said something about an application, but from whom I did not know; that is, I heard it from Metcalf; I suppose it was Garsed.

Question 17. After the conversation to which you have just referred, up to the time that Metcalf informed you that Schley had telegraphed this offer, of which you speak in your direct examination, had you any conversation with Metcalf about this cotton?

Answer. None that I recollect.

Question 18. Was the conversation had at the time you furnished Metcalf the memorandum for information the only one you had with him on the subject up to the time Metcalf told you Schley had telegraphed to Philadelphia?

Answer. I think it was. My recollection is that Sunday intervened.

Question 19. Had you any knowledge of the telegram sent by Schley, on the eighth of July, to Philadelphia, to Garsed?

Answer. Yes, I had.

328 Question 20. Had you then seen the telegram received by Schley, on the seventh of July, as stated in his answer, accepting the proposition?

Answer. I either saw it or was informed of its contents, and the telegram of the eighth of July, to Philadelphia, was intended as a reply.

Question 21. Did you know the contents of the telegram of the eighth of July before it was sent?

Answer. I did. My recollection is that I saw it.

Question 22. Did you inform your brother, Jeremiah Beall, of the contents of those telegrams, or either of them, before he came to Augusta, in August?

Answer. I do not recollect. My recollection is he had nothing from me.

W. A. BEALL.

Witness desires to add to his testimony: "In that portion of my direct examination w'ere I say, 'I recollect nothing else until after the arrival of Garsed in Augusta,' I desire to add, 'except the telegram received by George Schley from Philadelphia, about the seventh or eighth of July, and George's Schley's telegram in reply thereto.'"

Cross-examined:

That debt of one hundred thousand dollars to the Bank of
329 Hamburg, referred to in Mr. Jeremiah Beall's testimony, was it connected with the cotton transaction?

Answer. No; in no way.

W. A. BEALL.

Examination of Benjamin H. Hill.

BENJAMIN H. HILL, who, having been by me first cautioned and swórn to tell the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

I reside at Athens, Georgia; am forty-five years of age, and a lawyer by profession, and of counsel in this case.

On the ninth of September, eighteen hundred and sixty-five, I arrived in Augusta, Georgia, to investigate, by request, the conduct of the military authorities in seizing the cotton in question, and, if possible, to prev'nt the execution of the military orders by legal means. I went to the office of Thomas S. Metcalf, and found there said Metcalf and William A. Beall. I found Mr. Metcalf exceedingly alarmed, under constant fear of re-arrest by the military, and he seemed afraid
330 even to talk on the subject. I finally got possession of the papers, learned all the facts as far as I could, and determined that an application to the civil courts for an injunction to prevent the seizure and removal of the cotton was the proper remedy, and that to be effective it must be applied as soon as possible. I made known my conclusion to said Metcalf and William A. Beall. Mr. Metcalf positively refused to join the application for an injunction or to permit his name to be used in that connection, giving as a reason that the military had had him arrested under a false charge of bribery and refused to release him unless he would agree to give up the cotton and not further oppose the military orders; that he felt powerless; had been advised by counsel that the military authorities were absolute and could do as they pleased; that he believed their object was to take the cotton and never pay one cent for it; and that if he attempted any further to resist their purpose he would be re-arrested; and had been informed by his counsel that General Grosvenor had threatened to re-arrest him on the charge of bribery, if he made any difficulty in the execution of
331 these orders. I found it very difficult to get him to communicate even this much, and he made these communications only when I insisted on his joining in the application for the injunction. He said if he was re-imprisoned he believed he would die, and he would have died in a short time when imprisoned before if he had not been released; that to get and retain his liberty and, as he believed, his life, he had consented, as far as he was concerned, to give up the cotton, and he was going to do it, though under military orders, and the Bealls could do as they pleased. William A. Beall also hesitated at first, saying he wished I had been there sooner; that he wanted it done, but feared it was too late, as the military were then taking actual possession of the cotton,

through George Schley, and he feared any attempt to resist them would only get us all in gaol. I told him I would take the risk of the gaol and assume all the responsibility, but that he must not betray alarm. It was finally agreed that I should at least have an interview with General Steedman, who I said I believed was really ignorant of the real character of the case, and, upon being properly informed, would gladly present the injunction, which would
332 be done in his name. If this failed, then an injunction was the only civil remedy, but at the same time efforts to get the conduct of the military authorities in Georgia before the President and the War Department ought to be prosecuted. On Sunday, about noon, I called on General Steedman. As soon as I informed him that I came to see him touching the proceedings in relation to this cotton, he became immediately excited, and said he believed Metcalf was a damned rascal, and he (Steedman) had determined that nobody should talk with him on the subject of that cotton in behalf of Metcalf. I told him I did not appear in behalf of Metcalf, whom he had certainly alarmed to such an extent that he would not agree for any one to appear for him, but that I appeared for other parties who had the largest interest in that cotton, and who never had been heard. He asked me who. I said "The Bealls." He said he believed they were just as damned rascals as Metcalf, and he would not hear me for them either. I told him from the character which had been given of him to me by Mr. McLean, of the Cincinnati Enquirer, I had given it as my opinion that he (Steedman)
333 did not really have correct information in the case, and that I did not appear before him because I regarded the military as having any jurisdiction whatever in civil cases of that nature, but because I believed outrageous injustice was being done in his name, without his knowledge, and that I felt it due to him simply to give him an opportunity to correct, and that I was perfectly willing to appear before him, face to face with the other side, so that he could hear all the parties and know all the real facts in the case. He said: "I know as much about the damned cotton as I want to know. I wish it was all in hell and the Bealls and Metcalf with it, and I don't care whether I know all the facts or not; I am no lawyer, and have no reputation to loose in that line." He then, with great emphasis, said he had sworn that no person should talk with him in behalf of the parties on that side of the case, and that I must stop talking with him on the subject; that he had no objection to my making a fee, but I must make it without interfering with his military orders, and that if I did attempt to interfere with them,
334 he would lock me up. I told him I had not come to him to settle my fees, nor was alarmed at his lock-up, but that I had come to enable him to do justice, first to himself, and then to parties whose property was being forcibly taken from them, under orders in his name, and without ever having been heard, or having been even notified that they might be heard, and one of them was ignorent of even the existance of the proceedings until long after the orders were passed, and this one had the controlling interest in the cotton. I then said, "I have discharged my duty to you, and, if you refuse justice to these parties, you cannot blame them if they apply elsewhere to get it." He says, "What do you mean? By injunction?" I said, "Yes; or by any other remedies known to the laws." He then said, in considerable passion: "My provost-marshal-general is the supreme court of the State of Georgia. He has decided this case, and these military orders shall be carried out, and if any damned State judge undertakes to interfere with my military orders, by injunction or otherwise, I'll be damned if I don't lock him

up." I said, "Well, if I can find a judge who has courage enough to do his duty under his oath, I will give you an op-
335 portunity to lock him up." He then said, "Do you suppose I would permit any damned little State court to interfere with my military orders?" emphasizing "my" very emphatically. I replied, "No State court will interfere with your military orders proper, but we will not permit you to pass orders in civil cases and prevent interfearance by calling them military orders. And if you suppose ten thousand bales of cotton can be taken from a citizen of Georgia by military orders and placed in the possession of a citizen of Philadelphia, until every remedy known to the laws to prevent it is exhausted, you have made a mistake. Such a state of things would be a disgrace to the legal profession of the State. I shall therefore do my duty as counsel; and if I can find a judge who will do his duty as an officer, we shall interfear' in this case by legal process, and in no other way. And I don't think you will lock us up, either." At this moment dinner was announced. We both rose simultaneously and walked toward the door, General Steedman gesticulating excitedly, an' saying he could lock up anybody—anybody who interfeared with his military orders." I said,
"General, you say 'anybody.' Suppose the President was to in-
336 terfear', would you lock him up, too?" This I said tantalizingly. He replied, in a very much altered and milder manner, "Now you suppose a case; of course I can't say that." I said, then, "Very well, General; perhaps one of these days we will understand each other. Good morning."

About two hours after this I was approached by E. M. Bruce, urging me to compromise this case. I said, "Steedman will not even talk to me. How, then, can I compromise it?" He said, "I can bring you a man who will talk with you about it, and Steedman will do whatever he says." He furthermore stated that we could settle the case in a very short time and save my clients half the cotton, and that was more than anybody else who had ever been connected with it had been able to do. I declined to entertain a proposition to compromise, or to advise my clients to entertain it, unless the military orders were first revoked unconditionally. He said that would never be done, because there were persons very high in office interested in that cotton; that he would not say Steedman was interested; he did not believe he was; but there were officials much higher than Steedman who were interested. I
told him it made no difference; that I believed there was one
337 honest man in office, at least; but that if he could convince me that Andrew Johnson himself was interested in the military seizure of that cotton, I would make the issue with him and fight him on it, for I wanted the question settled now whether there was any security for person or property left in this part of the country. I made known the result of the interview with Steedman to William A. Beall, and he told me to proceed with the application for the injunction in the name of himself and his brother Jeremiah, Metcalf still refusing. I did draw the bill, and applied for an injunction, first to Judge Hook and then to Iverson L. Harris, who granted it. I returned to Augusta with the injunction on Sunday night, the seventeenth of September. On Monday morning I sent General Steedman a message that I had the injunction. I filed the bill in the clerk's office on the eighteenth of September. While the bill was being printed, and before its service, I was passing General Steedman's headquarters on Wednesday, the twentieth of September; he stopped me, and, smiling very graciously, handed me an order which he said was then in proof, and that he would send me a

copy as soon as it was issued. I think this was General Order num-
338 ber fifteen, if I am not mistaken in the number. It suspended all military orders in civil cases, with certain exceptions in favour of the United States and freedmen, I believe. I communicated the information to my clients, and, after consultation, we were not satisfied with the general character of the order and the word "suspended." I therefore made application to General Steedman, myself, for a special order, revoking all the military orders touching this particular lot of cotton. He promptly gave me an order declaring that General Order number fifteen (if that was the number) revoked all orders touching the ownership, title, or possession of the cotton in question. This order was dated, I think, on the twentieth or twenty-first of September, according to the best of my recollection, and the original was delivered into my possession. I sent this order for the inspection of George Schley with a demand for the restoration of all the cotton and other things he had taken from us under the military orders for John Garsed or himself. He declined to do so unless General Steedman would pass a special order directed to him ordering the restoration. I went immediately to General Steed-
339 man, in person, and communicated to him the answer of Schley, with the remark that he had become very particular or was hard to please, or something of the kind. General Steedman sat down in my presence and drew an order, ordering the restoration of everything that had been taken or received under the military orders. I omitted to state that when General Steedman handed to me the order referred to as General Order number fifteen, I said to him, "This is all right, General, and this is all my clients want; I suppose I can now safely abandon the injunction." He said he was glad I was pleased, and he knew reason why I could not abandon the injunction. Afterwards some person, I do not know who, suggested to me that George Schley felt that that bill seriously involved his character, and that he desired I should not dismiss it until he had an opportunity of answering it, and that as he was a brother member of the bar, he hoped I would extend that courtesy. I said, "Certainly, he shall have it." From that time I regarded the case made by the bill as practically ended, and recollect giving no orders touching the service of it. I desire to state here that the original order of revocation referred to I kept carefully in my possession un-
340 til about six months ago, when I missed it in this city for the first time. I have diligently searched for it since; have been utterly unable to find it, and believe it is lost.

About the last of February or first of March, eighteen hundred and sixty-six, I happened in Augusta on business. I met William A. Beall, who said my visit was very lucky, as he was just about to telegraph me to come. I asked him what was the matter. He said they were threatening to have himself, Metcalf, and his brother (Jeremiah Beall) arrested, and all carried to Washington City to be tried by a military commission on that charge of bribery. I said, "Oh, Beall, that is only intended to alarm you and make you pay something; there is no truth in it and you must not become frightened." He said, "He was not frightened, but Metcalf seemed to be uneasy, and thought there might be something in it." I went immediately with him to see Metcalf. Mr. Metcalf told me that Mr. Alexander H. Stephens had been to see him, and begged him to settle the case, and that he was in danger of being arrested and carried to Washington City, and that he was an old man, and that peace was more important to him than
341 money, and he would advise him, as his personal friend, to settle it up. I told him Mr. Stephens was mistaken. I would guaran

tee that he would not be tried by a military commission in Washington, or anywhere else, and that he must not suffer himself to become frightened. On the same day Metcalf said to me, "Mr. Stephens says it is true; he has seen the papers, and they are now in Augusta." I then said to Mr. Metcalf, "Well, tell Mr. Stephens that in a matter of this importance, if the papers are here, it is due to you to see them." He afterwards told me he had so told the parties, and the papers would be at his office at four o'clock that afternoon, and that I must come around and see them; that the papers were to be accompanied with the amount they demanded. I went around at the appointed time, and found two letters, one purporting to be from General Steedman to General Grosvenor, and the other the reply from General Grosvenor to General Steedman. They were both in envelopes of the St. Nicholas Hotel, New York. I do not remember whether there was any postmark on them.

342 From having seen him write, I thought, and still think, that the one purporting to be from General Steedman was in his handwriting. Judge Gould was in consultation with us at that time. The demand that accompanied the letters to secure a settlement was, according to my recollection, four hundred and seventy-five thousand dollars. I gave it as my opinion that the correspondance was gotten up and placed in the hands of Garsed for the express purpose of intimidating the parties into the payment of money. The demand was rejected. I took a copy of the letters and proceeded, by agreement, *and proceeded* at once to Washington City, to investigate the statements made in the letters. With the assistance of others we made a thorough search of the Executive and War Departments, including the office of General Grant, and were everywhere informed that no such charges had been filed, and the President assured me that no such unconstitutional arrest and trial of a citizen by a military commission would be permitted. I examined the original letters, above referred to, carefully; took copies myself, and directed other copies to be taken, the originals themselves being returned. More than ten days before the day set for the trial of

343 this case, at this term, I gave notice in writing to the counsel of complainant to produce the originals of these letters and of all correspondance between the same parties on the same subject; the copies produced on this examination are correct copies of the said originals. I do not know whether Mr. Metcalf procured these letters from Mr. Stephens or from Willis. I never told General Grosvenor at any time that his military orders were revoked in Washington through my influence, but I was informed by General Steedman that he (Steedman) suspended or revoked the orders, by direction or orders from the War Department, and that he always thought from the beginning, himself, that he had no jurisdiction of the question.

Question, (on the part of T. S. Metcalf.) Did General Steedman give you the order of revocation, to which you have testified, before or after the service of the injunction?

Answer. My recollection is, it was before the service of the injunction.

Cross-examined:

(Complainant's counsel object to all the conversations of the witness with Thomas S. Metcalf, William A. Beall, General Steedman, E. M.

344 Bruce, or other persons, w'o are not in interest or privity with John Garsed, Richard Garsed, or Robert Patterson, and also all verbal testimony of facts, evidenced by writing, and especially in relation to the military or civil action in this case, and also all opinions

and deductions of the witness as to facts, and the whole testimony, as illegal and not *relative* to the issue.)

Question 1. Is not Mr. Bruce dead?

Answer. I have been informed he is.

Question 2. Is not Mr. George Schley dead?

Answer. I have heard he is. According to the best of my recollection, he died soon after the filing of this bill.

Question 3. Is Mr. Thomas S. Metcalf dead?

Answer. I have not heard of his death. He was alive a week ago.

Question 4. What was his physical condition as to health when you last saw him?

Answer. He was up and in the streets when I last saw him, but I think spoke of not being well and not able to get about much.

Question 5. Did you serve him with the notice to produce the original letters about which you have testified and which you say was served on complainant's counsel?

Answer. I did not serve him with notice to produce the originals, but soon after being informed by complainant's counsel that they intended to go into the question of bribery on this trial, I searched again
345 for the copies of those letters presented by me, and being unable to find them, I went to Mr. Metcalf and told him I remembered that other copies were taken before the originals were returned, and I wanted him to hunt them up; that they were very important.

(The complainants' counsel objected to the conversation with Mr. Metcalf for the reason above stated, as being neither legal nor responsive to the question.)

Question 6. Are you the counsel for Mr. Thomas S. Metcalf in this case?

Answer. I am not. He became responsible to me for my fee, but only as security, and, after the military orders had all been revoked, my recollection is he became so voluntarily.

Question 7. Did you serve any notice on Judge Gould, the counsel of Metcalf in this case, to produce those letters?

Answer. I did not.

Question 8. At whose request did you go to Augusta to inquire into the conduct of the military in this matter?

Answer. Several gentlemen, all of whose names I do not remember, but who approached me at different times and places, and informed me they knew Metcalf wanted to see me, but was afraid to say so; that they had been to Augusta, and felt it was their duty to request me to go. One
346 of these gentlemen I now remember was F. A. Frost, of La Grange; another was Mr. Glenn, of the present firm of Glenn, Wright & Carr, of Atlanta. I think Mr. Dufield also requested it, but I do not remember, and others whom I do not remember.

Question 9. When you went to Washington to enquire if the charges of bribery had been refiled, did you examine or enquire personally anywhere but at the President's office.

Answer. I did not make personal examination or enquiry at any other office than those of the President's department proper.

Question 10. Whom did you get to examine the offices of the War Department?

Answer. Mr. Church, of New York.

Re-examined:

Witness states that he got Mr. Church to make the examination in the

other offices, because he could do so much more efficiently than he himself could.

BENJ. H. HILL.

347 *Examination of William T. Gould.*

WILLIAM T. GOULD, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows:

I reside in Augusta, Georgia, and am counsel for Metcalf in this case. About the thirty-first of July, A. D. 1865, at the request of T. S. Metcalf, I went with him to the quarters of General Grosvenor, whom I then saw for the first time, to investigate the matter of this cotton. General Grosvenor told me he had decided that the alleged contract should be enforced. I remonstrated on a decision without a hearing. We had some discussion on the matter, and he agreed to give me a hearing. I desired him to furnish me the evidence in the case, in order to prepare to meet it, and he handed me Mr. Schley's affidavit, of which a copy is affixed to General Grosvenor's evidence, and the papers, of which copies are annexed to Schley's answer, C, D, DD, and E, and I think no others at that time. The affidavits of Freedman and Waltmeyer were show'd to me the next day. Nothing was said of Metcalf's admissions
348 in previous conversations with Grosvenor, nor did I ever hear of such conversations till testified to by Grosvenor during this investigation. He said I should examine Schley further. In that conversation he intimated that if Metcalf did not mind, he would apply to the President and have his pardon revoked. He appointed, I think, the day after (1st August) for the hearing, but I am not positive whether one day or two was allowed.

I prepared affidavits for Metcalf and W. A. Beall, which were sworn to. I applied to General Grosvenor on the morning of the day of trial for time to prepare an argument, having had no knowledge whatever of the matter till I was called on to see General Grosvenor, as above stated. On the hearing before General Grosvenor, I cross examined Mr. Schley, at considerable length. General Grosvenor began to take down his answers, but soon told me he could not write, (I think his right arm was lame,) and desired me to do so. I wrote out two or three pages of foolscap of Schley's answers, which were sworn to by him. I also presented Metcalf's and Beall's affidavits, which I read to General Grosvenor in presence of both of them. After such an argument
349 as I was able to present on such short preparation, General Grosvenor told me his decision should be written out and announced the next day. I called the next day and was postponed for another day. I then called again, and he read me his order deciding the case, saying: "I expect you will be surprised at this. I have not had time to write out my reasons, but will do so soon and give them to you in justice to myself." I called for them afterwards, I think more than once, but could never get them. I applied to General Grosvenor for the papers and evidence in order to prepare an appeal to General Thomas, and he gave me copies, which I afterwards returned to him, of all the papers to which I have referred, but said nothing of Metcalf's confessions to him. I set about preparing an appeal to General Thomas, and was stopped in doing so only by the consent of Metcalf not to appeal, of which I will speak more fully presently. Soon after this Metcalf was arrested on the charge of bribery, and very rigorously confined in jail. I was allowed to visit

him, and I was treated by the U. S. officers with perfect courtesy. I applied to General Grosvenor to let his son-in-law, Mr. Kerr, see him
350 in prison. General G. refused, unless in my presence. Some days after Metcalf was paroled, and confined to his own house on parole by order of General Steedman, on account of his age and debility.

Joshua Hill had been employed to negotiate for his release, a military commission having been ordered by General Steedman to try him for bribery. After considerable discussion, the particulars of which I cannot recollect, Mr. Hill stated to Mr. Metcalf in my presence, that no appology would be received unless all appeal to General Thomas was abandoned. This seemed at first an insuperable difficulty. After long and earnest consultation I said to Mr. Metcalf, "Your head is in the lion's mouth. There is no knowing what this military commission will do, and you had better lose the whole of this cotton than risk the consequence of a trial. I believe that is very nearly my language, and after much hesitation Metcalf agreed to sign the paper, now produced, in Joshua Hill's handwriting, which was copied from a draft prepared by myself, after it had been corrected, by erasure and interlin'ations.

After this it was determined to carry out the consent above re-
351 ferred to in good faith. Of General Grosvenor's offering any facility to Metcalf or to me for carrying the case before General Thomas, or of offering transportation for the purpose, I hear for the first time on this examination. Metcalf did not dare to move in that direction, and I considered it madness for him to attempt it.

Some discussion followed, as to the mode of payment, with Mr. Schley, whom I understand to be acting for Mr. Garsed. Mr. Metcalf told Mr. Schley to telegraph Garsed to place one hundred thousand dollars of the money in the Bank of Republic in New York, and bring the rest in currency to Augusta.

There was a difficulty about the price of the cotton. Metcalf claimed that twenty-three cents should be paid, as that was the price mentioned in Schley's offer to Garsed. General Grosvenor ordered twenty cents to be received, as that was the price mentioned by Metcalf in the paper he gave to Schley. There was a great deal of negotiation and various orders issued between that time and Mr. Garsed's arrival.

On the thirty-first of August General Grosvenor issued the
352 order of that date recited in the original bill of complaint. I remonstrated as warmly as I could on the change from an order to pay cash for one to give individual bills without security. General Grosvenor insisted on the change, and concluded our conversation thus: "Well, Mr. Metcalf knows where I've got him, and if he makes any further trouble about obeying this order, I'll renew the charge of bribery, and arrest him at once, so help me God."

I saw General Steedman that evening and told him of the order of 31st of August. He seemed much surprised, said most emphatically that he never gave such an order, and he would see General Grosvenor at once and revoke it. It was revoked the next morning.

When Mr. B. H. Hill came to Augusta, I met him at Mr. Metcalf's office by accident; had never seen him before. He broached this subject immediately and proposed to file a bill for an injunction. I told him Mr. Metcalf could not have anything to do with such a proceeding,
because, first, he had promised in writing not to do so; and, sec-
353 ondly, if he did, he would most certainly be arrested and brought before a military commission. I insisted that he should not consult Mr. Metcalf at all in the matter, and requested him not even to have any interview or conversation with him while he remained in town. The bill was filed as now in court.

A great many efforts were made by Mr. Schley and others to induce Mr. Metcalf to compromise this matter after the service of the injunction. He repeatedly applied to me in great alarm at the idea of a military commission or of the case being carried to the superior court in Washington, and I had great difficulty in quieting him.

When the letters, of which copies are here, between General Steedman and General Grosvenor, were in Metcalf's possession, (I cannot fix the exact date; I was at that time in great anxiety from the extreme illness of one of my family,) I saw them at Metcalf's office. I cannot testify positively that the copies produced are correct, but, so far as I do remember, they are so. I got them from Metcalf to be used here. I have seen General Steedman and General Grosvenor write, the latter frequently; the originals I saw were in their handwritings respect-
354 ively, so far as I am capable of judging, and I examined them particularly in reference to that question. I do not know where Metcalf got them nor what he did with them. He intimated to me that they had been handed to him in confidence, to show him his danger and induce him to compromise with Garsed, and my impression is that they came from E. Willes, of Charleston. I am not certain of this. I thought it all a ruse to frighten Metcalf. I think the letters had no postmark, but am not at all certain of that; both envelopes were marked "St. Nicholas Hotel, N. Y." I advised that enquiry be made at Washington, and Mr. Hill went there for the purpose.

WM. T. GOULD.

355 AUGUSTA, GA., *July* 21, 1869.

I hereby certify that the foregoing one hundred and sixty-eight written pages and the exhibits hereunto annexed contain all the testimony taken before me, as examiner in the said case.

JOSEPH P. CARR,
Examiner.

(Endorsed:) 28. Testimony taken by the examiner. William A. Beall and Jeremiah Beall vs. John Garsed, George Schley, and Thomas S. Metcalf. Filed November 10th, 1869. Jas. McPherson, clerk.

356 In the fifth circuit court of the United States for the southern district of Georgia.

WILLIAM A. BEALL AN' JEREMIAH BEALL
vs.
JOHN GARSED, GEORGE SCHLEY, AND THOMAS S. Metcalf.

Bill in equity for relief and injunction, trial forwarded from the superior court of Richmond County, State of Georgia, for a hearing prayed by Garsed in his answer against the complainants, the Bealls, and his codefendant Metcalf.

It is adjudged and decreed by the court that the parties were at issue when this case was transferred to this court, Garsed on the one side, and on the other his codefendant Metcalf, and the complainants, the Bealls, for the purpose of the relief sought by Garsed in his answers, original and amended, and that the said parties are now so at issue in this court. It is further ordered, that said case be set down, and is now set *set* down, for trial, but be entered and stand for a hearing on the first day of the

next term. It is further ordered that the commission for taking testimony in this case before Joseph H. Carr, as commissioner, be now closed.

May 14th, 1869.

JOHN ERSKINE,
U. S. Judge.

357 And the counsel for Thomas S. Metcalf, William A. Beall, and Jeremiah Beall except to the above order and decree, and ask the court to note the exception.

BENJN. H. HILL,
Atty. for Bealls.
WM. T. GOULD,
For Metcalf.

It is not necessary or proper to note an exception in a cause in chancery. But the chancellor 'theless takes notice of the above at request of solicitors.

May 14th, 1869.

JOHN ERSKINE,
U. S. Judge.

358 EXHIBIT F.

AUGUSTA, *July 8th*, 1865.

To JOHN GARSED,
No. 109 *Chestnut st., Phila.:*

Parties owning the nine-thousand-bale lot refuse to sell unless funds were here; if here to-day bargain could be closed, and probably can be on your arrival.

GEO. SCHLEY.

Deposition of Col. M. Friedman.

On or about the 22d day of July, 1865, I was standing and conversing with Lt. Col. Wattermeger, when Mr. T. S. Metcalf came up and joined with us in conversation. Mr. Metcalf said to me that I had been a big fool that I had not purchased the *the* lot of cotton which he had offered for sale to me about the beginning of June, 1865; that if I had purchased the same *that* I would have made my fortune, alluding to about 9,000 bales which he at that time (forepart of the month of June) had offered for sale. He also then and at that time said that the gentleman who had purchased the lot of cotton which I had refused to buy was on his way to this city, and was only detained by the low state of water in the river, and that he would give him two hundred thousand dollars to let him off of the sale, or give him two hundred thousand dollars
359 profit on it. I took particular notice of the conversation, as I felt grieved not to have purchased the lot of cotton.

(Signed) M. FRIEDMAN.

Augusta, Georgia, July 31, '65.

Sworn to and subscribed before me this the 31st day of July, 1865.
J. K. OLIVER,
Notary Public R. C.

Certificate of Lt. Col. Wm. Watterman.

I certify that I was present in a conversation between Mr. T. S. Metcalf and Col. Friedman, when Mr. Metcalf said that the gentleman who purchased his lot of cotton was now detained on the river on a/c of the low water, and that he would give him two hundred thousand dollars

to let the sale be cancelled, and that Col. Friedman would have made his fortune if he had purchased the lot of cotton of him when he had offered the same to him for sale.

Augusta, Ga., August 1st, 1867.

WM. WATTERMAN,
Lt. Col. 159 Reg. N. Y. So.

(The foregoing testimony and exhibits endorsed as follows:) H. J. P. Carr. U. S. circuit court, so. dist. of Georgia. In equity. William A. Beall & Jeremiah Beall, compts., vs. John Garsed, T. S. Metcalf & George Schley, defendants. Testimony of George Schley before Genl. Grosvenor, and Exhibits A, B, C, D, E & F. Filed Nov. 10, 1869. Jas. McPherson, clerk.

360 *A writing in the hand of T. S. Metcalf.*

Believed to be in very good order as a whole lot, and to average 500 lbs. to the bale. They belong to and were bought by a large planter in Southwestern Geo., and can this day be bought for 20c. for greenbacks. They are mostly crop lots entire, and therefore desirable for spinners, as cottons in that section are long staple. There is very little doubt but that they can be had at that price a short time hence, if a buyer should come out with the cash, and go down and see them and the cotton.

NOTE ON SIDE OF WRITING.—This is Metcalf's own writing. The top and bottom were cut off by Geo. Schley to go & examine the cotton.

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. William A. Beall & Jeremiah Beall, complts., and John Garsed, T. S. Metcalf and George Schley, dfts. A writing in the hand of Metcalf. Top & bottom cut off, &c. Filed Nov. 10, 1869. Jas. McPherson, clerk. Joseph P. Carr.

Memorandum of cotton at Americus, Albany, &c.

Americus	1,104 B.	559,281 lbs.	20c.	$111,856 20
Albany, S. & R. W. H.	3,354 "	1,731,774 "	"	346,354 80
Do. H. J. C., &c "	2,557 "	1,311,495 "	"	262,299 00
Dawson, &c	1,210 "	640,518 "	"	128,103 60
Eufaula	1,405 "	788,954 "	"	157,790 80
	9,730	5,032,022		1,006,404 40

(Endorsed:) Joseph P. Carr. U. S. circuit court, so. dist. of Georgia. In equity. W. A. Beall & Jeremiah Beall, compts., and John Garsed, T. S. Metcalf & George Schley, dfts. Mem. of cotton at Americus, Albany, Dawson, &c., and Eufaula. Filed Nov. 10, 1869. Jas. McPherson, clerk.

361 *Charges and specifications against T. S. Metcalf and L. Cohn, &c.*

Charges and specifications against Thomas S. Metcalf and Leopold Cohn, citizens of the State of Georgia.

CHARGE 1ST.—Attempting to bribe an officer of the United States Army.

Specification 1ST.—That said Thomas S. Metcalf and Leopold Cohn, at

the city of Augusta, county of Richmond, and State of Georgia, on or about the 1st day of August, A. D. 1865, did corruptly and wickedly and intentionally conspire together to bribe an officer of the United States Army, to wit, Brevet Brigadier General Charles H. Grosvenor, of volunteers, and, in furtherance of such conspiracy, did then and there corruptly and knowingly offer to said Charles H. Grosvenor, being an officer as aforesaid, the sum of two hundred thousand dollars, to be then and there divided between said Leopold Cohn and said Charles H. Grosvenor, if said Grosvenor would falsely and corruptly release certain cotton, to wit, 9,778 bales of cotton claimed by one John Garsed, and sold by said Thomas S. Metcalf, George Schley, Jeremiah Bell, and Amos Bell, to said John Garsed; this after said Metcalf and said Cohn well knew that said Grosvenor had decided that said cotton then and there belonged to said Garsed.

362 *Specification 2d.*—That on or about the 1st day of August, A. D. 1865, one Charles H. Grosvenor, then being an officer of the United States Volunteer Army, to wit, a brevet brigadier-general, and acting in the capacity of provost-marshal-general of the Department of Georgia, it became his duty as such officer then and there to decide whether a lot of cotton, to wit, 9,778 bales of cotton, belonged to one John Garsed, or whether said cotton belonged to said Thomas S. Metcalf and other persons than said Garsed; that after it was made known that said officer had decided that said cotton belonged to said Garsed, said Thomas S. Metcalf and Leopold Cohn did wilfully and corruptly conspire together, and did then and there corruptly offer to said Brevet Brigadier-General Grosvenor that if he would then and there decide and hold that said cotton should not be delivered to said Garsed, that then and in the event of such decision that said Cohn and Metcalf would pay or cause to be paid to said Grosvenor two hundred thousand dollars; all this being well known to said Cohn and Metcalf at Augusta, Ga.

Specification 3d.—That said Leopold Cohn and Thomas S. Metcalf did, on or about the 1st day of August, 1865, at the city of Augusta, Georgia, *did* conspire together and corruptly attempt to bribe an officer of the United States Army, to wit, Brevet Brigadier-General Charles

363 H. Grosvenor, and provost-marshal-general of the Department of Georgia, by then and there wilfully, knowingly, and corruptly offering to pay said officer, then and there acting in his said official capacity, one thousand dollars in gold coin, on condition that the said officer would then and there corruptly and intentionally decide a certain case then pending before him, the said officer, wherein one John Garsed was party of the one side, and George Schley, Thomas S. Metcalf, Jeremiah Bell, and Amos Bell were parties on the other side, in favor of said George Schley, Thomas S. Metcalf, Jeremiah Bell, and Amos Bell, and against said John Garsed.

CHARGE 2ND.—Bribing an officer of the United States Volunteer Army.

Specification 1st. That said Thomas S. Metcalf and Leopold Cohn, at the city of Augusta, in Richmond County, and State of Georgia, on or about the 1st day of August, 1865, did corruptly and wickedly conspire together to bribe an officer of the United States Army, to wit, Brevet Brigadier-General Charles H. Grosvenor, of volunteers, and, in furtherance of said conspiracy, did there and then corruptly pa*id* to said Charles H. Grosvenor, being an officer as aforesaid, the sum of ten thousand dollars, to be then and there divided between said Leopold Cohn and said Charles H. Grosvenor, if said Grosvenor would

364 then and there falsely and corruptly release certain cotton, to wit, 9,778 bales of cotton, claimed by one John Garsed, and sold by said Thomas S. Metcalf, George Schley, Jeremiah Bell, and Amos Bell, to said Garsed; this after said Metcalf and said Cohn well knew that said Grosvenor had decided that said cotton belonged to said Garsed; all of which was well known to said Leopold Cohn and Thomas S. Metcalf.

CHARGE 3RD.—Conduct to the prejudice of good order and military discipline.

Specification 1st.—That said Thomas S. Metcalf and Leopold Cohn, at the city of Augusta, in Richmond County, Georgia, on or about the first day of August, 1865, corruptly and wickedly conspired together to bribe an officer of the United States Army, to wit, Brevet Brigadier-General Charles H. Grosvenor, of volunteers, and, in furtherance of said conspiracy, did then and there corruptly offer to said Charles H. Grosvenor, being an officer as aforesaid, the sum of two hundred thousand dollars, to be then and there divided between said Leopold Cohn and said Grosvenor, if said Grosvenor would falsely and corruptly release certain cotton, to wit, 9,778 bales of cotton, claimed by one John Garsed, and sold by said Thomas S. Metcalf, George Schley, Jeremiah Bell, and Amos Bell to said Garsed; this after said Metcalf and said Cohen
365 well knew that said Grosvenor had decided that said cotton belonged to said Garsed; all of which was well known to said Leopold Cohen and Thomas S. Metcalf.

Specification 2d.—That on or about the 1st day of August, 1865, one Charles H. Grosvenor, then being an officer of the United States Army, (volunteer,) to wit, a brevet brigadier-general, and acting in the capacity of provost-marshal-general of the Department of Georgia, it became his duty as such officer to decide whether a lot of cotton, to wit, 9,778 bales of cotton, belonged to one John Garsed or whether it belonged to said Thomas S. Metcalf and other persons than Garsed; that after it was made known that said officer had decided that said cotton belonged to said Garsed, *and* Thomas S. Metcalf and Leopold Cohen did wilfully and conspire together, and did then and there corruptly offer to said Brévet Brigadier-General Grosvenor that if he would then and there hold and find that said cotton did not belong to said Garsed, and that said cotton should not be delivered to said Garsed, that then and in the event of such decision, that said Cohen and said Metcalf would pay or cause to be paid to said Grosvenor two hundred thousand dollars.

All this being well known to said Cohn and Metcalf at Augusta, Ga.

(Signed) C. H. GROSVENOR,
Brevet Brig. Gen. & P. M. G.

366 AUGUSTA, GEO., *Aug. 10th*, 1865.

I admit the truth of the charge and specifications contained herein in every particular, and appeal to Major-Gen'l Steedman for elemency in my behalf.

L. COHN.

Witness:
R. S. KING,
1st St. County Jail.

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. William A. Beall & Jeremiah Beall, complts., and John Garsed, T. S. Metcalf, and George Schley, defts. Charges and specifications against

Thomas S. Metcalf & Leopold Kohn, by C. H. Grosvenor. Filed Nov. 10, 1869. Jas. McPherson, clerk.

Answer of T. S. Metcalf to charge of bribery.

THOMAS S. METCALF wishes to be distinctly understood that in the negotiations in reference to 9,778 bales of cotton claimed to have been by him sold to John Garsed, and the litigation in regard to it, he has never had any intention of offering a bribe to General Grosvenor, who presided in the case, or to any other officer of the United States; nor has he ever intended to intimate to any such officer that he sup-
367 posed him accessible to any such offer. If such construction has been placed on any act of his, or any act authorized by him, he distinctly disclaims & disavows it. If anything done or said by him has reflected on the honor or wounded the feelings of General Grosvenor, he regrets the misapprehension, and trusts this will be received as a sufficient apology. And while he admits he was disappointed in the decision made in reference to the cotton, he acquiesces in it, and will take no step to disturb it, having no reason to suppose that the decision was produced by any partial or improper motive.

Augusta, Ga., 10 August, 1865.

THOS. S. METCALF.

(Endorsed:) U. S. circuit court, so. district of Georgia. In equity. William A. Beall & Jeremiah Beall, complts., and John Garsed, T. S. Metcalf & George Schley, dfts. Mem. answer of Metcalf to charge of bribery, &c. Filed Nov. 10, 1869. Jas. McPherson, clerk.

Answer of Cohn to charge of bribery, &c.

LEOPOLD COHN, charged with attempting to bribe, in connection with Thomas S. Metcalf, Brevet Brigadier-General C. S. Grosvenor, an officer of the United States Army, in a matter respecting 9,778 bales of cotton, wherein John Garsed and others were parties, takes this occa-
368 sion to say:

That he never entertained any such intentions, and he deeply regrets that circumstances were such as to induce him to believe that he could obtain the assistance of Gen'l Grosvenor without on the slightest degree compromising his integrity.

That if in what he has done he has given just cause of offense to the authorities of the United States, and Gen'l Grosvenor in particular, he deeply regrets it, and takes this occosion to say that that officer stands fully vindicated in all he has done, and is entitled to the sincere admiration of all honest men.

That this is tendered as his acknowledgement of error and an application for forgiveness.

AUGUSTA, *Aug. 10th*, 1865.

L. COHN.

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. William A. Beall & Jeremiah Beall, complts., and John Garsed, T. S. Metcalf & George Schley, dfts. Answer of Kohn to charge of attempting to bribe, &c. Filed Nov. 10, 1869. Jas. McPherson, clerk.

369 *Copy of letter from Gen'l Steedman to Gen'l Grosvenor.*

WASHINGTON CITY, *Feb'y 16th*, 1866.

GEN'L.: The charges preferred by you against Metcalf and the Bealls have been referred to me by the Secretary of War, upon the suggestion

of the judge-advocate-general and as you are only officer who was approached by these parties, I deem it to be due you to get your opinions and wishes before taking action upon the charges. You know I stand ready to vindicate you as a man and as an officer, and whatever it is necessary to do in this matter to fully vindicate your personal official conduct in the whole transaction shall be done.

Let me hear from you as soon as convenient.

Very truly, yours,

JAMES B. STEEDMAN,
Maj. Genl.

Genl. C. H. GROSVENOR,
Athens, Ohio.

(Endorsed:) * * J. P. Carr. U. S. cir. court, so. dist. of Georgia. In equity. W. A. Beall & Jeremiah Beall, complts., and John Garsed, T. S. Metcalf, & George Schley, dfts. Copy of letter from Gen'l Steedman, at Washington City, to Gen'l Grosvenor, at Athens, Ohio. Feb'y 16, 1866. Filed Nov. 10, 1869. Jas. McPherson, clerk.

370 *Copy of letter from Gen'l Grosvenor to Gen'l Steedman.*

ATHENS, O., *Feb'y* 24, 1866.

GENERAL: Your letter, dated Washington, Feb. 16, 1866, is received. In it you state that you have had referred to you the 2d charges and specifications against Metcalf, Bealls & Cohn, and that you will listen to suggestions from me as to what shall be done.

I write to say that at Augusta I preferred the original charges against the parties, because they had been guilty of a gross outrage upon the U. S. Government, through me, and I felt it to be my duty to expose the whole matter. When the parties came forward and acknowledged their wrong; said it was a blunder; that my decision of the cotton case was correct, and that they would abide by and perform their original contract with John Garsed, thereof giving to the whole world an earnest that I was right and they wrong, I was willing to withdraw the case. But no sooner was that done than they commenced an organized system of abuse against me. They deny the contract with Mr. Garsed and refuse to execute it. They put in circulation that I was bribed over against them, and, in short, even add to the original crime.

Now, to vindicate myself and the Government, whose agent I was, I have refiled the charges, and I shall insist that unless they carry out in good faith the agreement made at the time I withdrew the former proceedings, thereby reaffirming my former decision, they be tried
371 and punished. Any arrangement they may make to compromise with Mr. Garsed, and which includes a full retraction of their abuse of myself and complete vindication of my official action, I will consider satisfactory; but short of that I will consent to nothing but their arrest and trial.

If tried, I think they should be taken to Washington and tried. The only witnesses the U. S. relies upon are North, & Cohn is in New York. It will be actual economy to try them in Washington, and then the military commission is always in session there. The Hon. Sect'y of War assured me that, if I said so, they should be tried, and I am compelled to insist upon it, if no adjustment is made.

I am, general, your obt. servt,

C. H. GROSVENOR.

Maj. Gen. STEEDMAN,
Washington, D C.

(Endorsed:) * * * Joseph P. Carr. U. S. circuit court, so. dist. of Georgia. In equity. W. A. Beall and Jeremiah Beall, complts., and John Garsed, T. S. Metcalf, and George Schley. Copy of letter from Gen'l Grosvenor, from Athens, Ohio, to Gen'l Steadman, Feb'y 24, 1866. Filed Nov. 10, 1869. Jas. McPherson, clerk.

372 *Copy of letter from Gen'l Grosvenor to John Garsed.*

Copy.] ATHENS, OHIO, *March* 29, 1867.

DEAR SIR: Yours of the 23 inst. is received. I was very glad to hear from you. I had feared you had forgotten my p. o. address.

I reply to your questions—

1st. Neither Metcalf nor his counsel objected to the testimony of Schley, and his attorney cross-examined him very fully. Metcalf told me very often that Schley told the story substantially correct, and in fact they did not differ materially.

2. Metcalf told me over and over that he had sold you the cotton just as you and Schley said he did. He told me this before you ever came to Augusta. "I mean before I ever saw you" & before you came to Augusta. At the time you applied me, and when I first told him I had concluded to assume jurisdiction, he then told me that he had sold you the cotton; that his partners, the Bells, were trying to set the sale aside, upon the ground that they were not consulted.

He said he thought you had forfeited the contract in several ways, and this was his theory pending the bribe.

He did not at any time in my hearing deny that he had sold, and before you came he said he had lost money by not holding on.

373 I was hurt about the 24 day of July, and he told me these things at different times during the first week of my illness.

I am under the impression that he also told me that he hoped you would not come. If you meet at Savannah, let me know as long beforehand as possible.

I shall get married and reach your city about the 22 May.

I think in the end you will beat them. I know you have right on your side.

Your friend,

C. H. GROSVENOR.

JOHN GARSED, Esq.

(Endorsed:) Joseph P. Carr. U. S. circ't court, so. dist. of Georgia. In equity. William A. Beall & Jeremiah Beall, complts., and John Garsed, T. S. Metcalf, & George Schley, dfts. Copy of letter Gen'l Grosvenor, at Athens, Ohio, to John Garsed, dated March 29, 1867. Filed Nov. 10, 1869. Jas. McPherson, clerk.

Letter from C. H. Grosvenor to John Garsed.

ATHENS, O., *July* 15, 1867.

JOHN GARSED, Eq.

DR. SIR: Yours of 10th July is received. Joseph M. Dand, eq., a notary public and United States commissioner, is a suitable person to take depositions before. I find that the testimony of Major

374 J. W. Stinchcomb, who was my clerk in the office of the pro. marshal-gen'l, will be quite as important as my own. He can state that Metcalf admitted the sale to you, and only claimed the non-'currence of the Bealls as the reason why he did not comply, and adds what I now

remember, that he said if he stood to the sale it would take all his share of the proceeds to make the Bealls' losses up. He also remembers that M. urged me to take the case and try it.

Let me give you some idea of my time and occupation ahead. From now until 15 Sept. I am pretty much at liberty, and from then till 15 Oct. I am engaged in the courts, & from 15 Oct. to 11 Nov. I am free.

Yours, in haste,

C. H. GROSVENOR.

(Endorsed:) * * * * Joseph P. Carr. U. S. circ. court, so. dist. of Georgia. In equity. William A. Beall & Jeremiah Beall, complts., and John Garsed. T. S. Metcalf, and George Schley. Letter from C. H. Grosvenor to John Garsed, Athens, O., July 15, 1867. Filed Nov. 10, 1869. Jas. McPherson, clerk.

375 *Order for process to make J. R. Danforth, exor., &c., a party.*

In equity. In the sixth circuit court of the United States for the district of Georgia.

JOHN GARSED
vs.
JEREMIAH BEALL, WILLIAM A. BEALL, & Thomas S. Metcalf.

The death of Thomas S. Metcalf, one of the defendants in the above-stated case, being suggested, it is, upon application of solicitors for John Garsed, ordered that process returnable to November rules, 1870, do issue to bring into court Jacob R. Danforth, the duly qualified executor of said Thomas S. Metcalf, requiring the said executor to enter himself a party, or to show cause why he should not be made a party to said suit within twelve months after service of said process.

(Endorsed:) U. S. cir. court, so. dist. of Georgia. In equity. John Garsed, compt., and Jeremiah Beall et al., defendants. Order for process to make J. R. Danforth, exr. of T. S. Metcalf, a party. Filed Sept. 5, 1870. Jas. McPherson, clerk. W. W. Montgomery, solr. for compts.

Order for J. R. Danforth to show cause, &c.

In the 5th circuit court of the United States for the southern district of Georgia.

JOHN GARSED, COMPLT., and JEREMIAH BEALL, WILLIAM A. BEALL, and Thomas S. Metcalf, defendants. — Removed from Richmond superior court. In equity. Record filed 15th day of April, 1867.

376 To Jacob R. Danforth, executor of Thomas S. Metcalf, deceased:

For certain causes offered before the judges of the fifth circuit court of the United States for the southern district of Georgia, in equity, you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, in the city of Savannah, at rules to be had on the first Monday in November next, to enter

yourself as a party, or to show cause why you should not be made a party, to the above-named suit within twelve months after the service of this writ.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this fifth day of September, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] JAS. McPHERSON, *Clerk.*

Service of the above order acknowledged, Sept. 5, 1870.

WM. T. GOULD,
Dfts. Solicitor.

(Endorsed:) In the fifth circuit court of the United States for the southern district of Georgia. John Garsed, complt., and Jeremiah Beall, W. A. Beall, & T. S. Metcalf, dfts. Order to show cause to J. R. Danforth, exr. of T. S. Metcalf. Filed the 6th day of Sept., 1870. Jas. McPherson, clerk. W. W. Montgomery, compt. solr.

377 *Plea of J. Danforth, executor, &c.*

In the fifth circuit court of the United States for the southern district of Georgia.

WILLIAM A. BEALL, & JEREMIAH BEALL, *vs.* JOHN GARSED, GEORGE SCHLEY, & THOMAS S. Metcalf. } Rule to make parties to November rules, 1870.

And now comes Jacob Demforth, executor of the last will and testament of Thomas S. Metcalf, one of the above defendants, deceased, and says that he ought not now to be made a party defendant, in room of his said testator, because he says that his said testator departed this life on the sixth of March, in the present year, and not before, and that letters testamentary were issued to this appearant, by the ordinary of Richmond County, on the twenty-third of May in said year, and not before, which letters are shown to the court, and twelve months have not yet elapsed since said letters were issued. And this he is ready to verify. Wherefore he prays judgment, whether he ought now to be made a party as aforesaid.

WM. T. GOULD,
Sol. for J. Demforth.

STATE OF GEORGIA,
Richmond County:

378 Jacob Demforth, being duly sworn, saith that the foregoing plea is true.

J. DANFORTH.

Sworn to & subscribed before me this 29th of September, 1870.

[SEAL.] JOSEPH P. CARR,
United States Commissioner, Southern District of Georgia.

(Endorsed:) 5th c. court U. S. so. dist. of Georgia. November rules, 1870. Equity. Wm. A. Beall, & Jere'h Beall vs. John Garsed, Geo. Schley, & Thomas S. Metcalf. Rule to make parties. Plea of J. Danforth, executor, &c. Filed Nov. 7, 1870. Jas. McPherson, clerk. Gould.

Order withdrawing sci. fa.

In the fifth circuit court of the United States for the southern district of Georgia.

WILLIAM A. BEALL AND JEREMIAH BEALL, complainants, *and* JOHN GARSED, GEORGE SCHLEY, & THOMAS S. Metcalf, defendants.	Bill in equity and answer, asking relief against complainants. Removal from Richmond superior court.

Ordered, on motion of counsel for Garsed, that the scire facias to make Jacob Danforth, as executor of Thomas S. Metcalf, a party defendant in place of said Metcalf, deceased, be, and hereby is, withdrawn.

379 LINTON STEPHENS,
Sol. for Garsed.
WM. T. GOULD,
Sol. for J. Danforth.

Be it so.

JOHN ERSKINE,
U. S. Judge.

In open court, Nov. 5, 1870.

(Endorsed:) U. S. cir. court, so. dist. of Georgia. In equity. Wm. A. Beall and Jeremiah Beall, complts., and John Garsed, T. S. Metcalf, & George Schley, defendants. Order withdrawing sci. fa. Filed Dec. 5, 1870. Jas. McPherson, clerk. Consent.

380 And afterwards, to wit, on the eleventh day of April, A. D. eighteen hundred and seventy-one, at a stated term of said circuit court commenced and held at the U. S. court-room in the city of Savannah, in said district, on the second Monday of April, (being the tenth day,) A. D. eighteen hundred and seventy-one—present, the Honorable John Erskine, United States judge for the district of Georgia, presiding—

Among other, the following proceedings were had, to wit:

Argument being had upon the bill, answers, and pleadings, and the cause submitted to the court, the Honorable John Erskine, judge as aforesaid, delivered in open court the following opinion:

381 *Opinion of Hon. J. Erskine.*

In equity. In the circuit court of the United States, southern district of Georgia. April term, 1871.

IN THE CASE OF WILLIAM A. BEALL AND Jeremiah Beall *vs.* THOMAS S. METCALF, JOHN GARSED, AND George Schley.	

CITATIONS BY COUNSEL.

This cause was argued by Mr. Linton Stephens and Mr. Robert Tombs for Garsed. Authorities cited by Mr. Stephens: Baldey vs. Parker, 9 C. L. R., 16; Elliott vs. Thomas, 3 M. & W., 170; Fife vs.

Clayton, 13 Ves., 546; Story Eq. Pl., § 395, 399; 34 Ga., 384; Benj. on Sales, 165; 1 Eng. L. R., 301; 2 Story Eq. Jur., § 717, 794, 796, 799, a and b; Sedg. on Dam's., § 310, 299, and notes, 315, 316, and notes, 74–81, note; Brown's Comm., 639, 640; Code, 2d ed., § 268, 1898, 1894, 1880, 2685, 3052, 1940, 2156, 2152; 29 Car. II, c. 3, § 17; Ex parte Milligan, 4 Wall., 141–2. By Mr. Tombs: Const. U. S., art. 3; § 1 and 2; Judiciary act of 1789 and amendments thereto, 1866 and 1867; Fife vs. Clayton, 13 Ves., 545; 9 How., 415; 1 Cow., 711; Stat. of Frauds; Code, 2 ed., § 1940, 2156; also 2152. As to Schley, agent of Metcalf and Bealls: Story on Agency, § 47–50 and notes 1, 160, 161, Del Credere Commission; id.,
382 § 33, 215, 328. As to agency of partners, see Code,—; Story on Agency, § 39.

By Mr. Gould, for Metcalf: 2 Dan. Ch. P. & P., 981; Story on Pl., § 414; 15 Ga., 324; Story on Agency, § 126, 133, 224; Code, 2d ed., § 1940, 2168, 2156; 29 Car. II, c. 3, § 17; Gr. on Ev., § 165. By B. H. Hill for the Bealls, against the jurisdiction of this court, sitting in chancery: Horsbury vs. Baker, 1 Peters, 232; Fowle vs. Lawrence, 5 id., 503, 563; Parsons vs. Bedford, 3 id., 446; 15 id., 299; Hipp vs. Bavin, 19 id., 279; Parker vs. Winnipiseogee Co., 2 Black, 505; Judiciary act, § 16; Jeremy's Eq. Jur., 424; Story Eq. Pl., § 398; Passim: Stat. of Frauds; Code 2d ed., § 2156, 2685–6; 1 Gr. on Ev., § 124, 200; Benj. on Sales, 51–54, 559–561, 664–670; Livingston vs. Roosevelt, 4 Johns., 278–9.

Solicitors and Counsel.

For Garsed: Johnson & Montgomery, Alexander H. & L. Stephens, Mr. Toombs, & Mr. Ashton, of Washington, D. C.

For Messrs. Beall: Mr. B. H. Hill.

For Metcalf: Mr. Gould.

Counsel cites from 2d ed. of Code; the court from the 1st ed.

Opinion.

383 Erskine, *J.*

This case was removed hither from a State court under the acts of Congress of July 27, 1866, and March 2, 1867. The Mess'. Beall, in September, 1865, filed their bill in Richmond superior court against Metcalf, Garsed, and Schley, making claim as joint owners with Metcalf to certain cotton, "each party owning the equal one-third undivided part of 8,694 (8,678) bales," stored at various places in Georgia, and including 1,406 bales at Eufaula, Alabama, and William A. Beall as "equal joint owner" with Metcalf of about 1,100 bales, stored at Americus, Georgia, and denying that any sale of it had been made to Garsed, with a prayer for discovery, for injunction restraining Garsed and Schley from moving said cotton, or taking possession of it, or interfearing with it in any manner, under military orders or otherwise, until the hearing of the court, and on the hearing for a perpetual injunction. Also, that Metcalf, if liable, might be compelled to account to the complain-
384 ants for the true value of their interests in said cotton, and that the complainants might have such other and further relief as the circumstances required.

The injunction was granted, and subpœna issued returnable to April term, 1866. The defendants answered the bill severally.

The answers of Garsed & Schley were filed in October, 1865, and that of Metcalf in April following.

Annexed to Schley's answer was the copy of a release executed by

him in favour of the other parties to the cause, plaintiffs and defendants, surrendering to them all his interest in the cotton in question. Garsed set up in his answer that he had purchased the cotton from the defendant Schley, who, as the answer alleged, was the agent of the plaintiffs and the defendant Metcalf, to make sale of it. He charged a breach of the contract of sale on the part of the plaintiffs and Metcalf, by failure to deliver, refusal to accept payment, &c., and prayed for a decree of specifit performance, or compensation in damages. In April he filed an additional answer, concluding it with a prayer for such decree
385 in the premises as he had prayed for previously, and as might be consistent with justice and equity.

In this state of the pleadings the plaintiffs' solicitor, on the 24th of September following, filed in the clerk's office an entry stating the case and proceeding as follows:

"The attempt to seize and remove the cotton under military orders by the defendants, as set forth in the above bill, having been abandoned, the complainants do hereby dismiss the bill. September 24, 1866.

"BENJAMIN H. HILL,
"*Sol. for Complainants.*"

This was done in vacation, and a copy of the entry was by the clerk placed on the docket of equity causes opposite the statement of this cause as continued on said docket.

At the succeeding term of the court, (October, 1866,) counsel for Garsed moved to set aside this entry of dismissal, which motion the court overruled. At the same term the same counsel moved for an order that the bill, with all the parties as made by it, be retained and proceed for the purpose of adjudicating the relief sought by the answer of Garsed against the complainants and Metcalf. The court denied this
386 order, but in lieu of it passed an order declaring that, because the bill had been dismissed in vacation, whilst the answer of Garsed set up an equitable claim for relief, the proper subject-matter of a cross-bill against Metcalf and the complainants, which claim, under the code of Georgia, entitled him to a hearing and trial, therefore, the said plaintiffs and Metcalf be retained in court as parties, to give Garsed the relief to which he might be entitled under the alleged contract; that the bill, though dismissed as to any discovery and relief in behalf of complainants, be retained to subserve all legal purposes for which it might be used in the litigation; that Garsed be held and considered as complainant, entitled to all the rights and subject to all the disabilities of that position; that the original complainants and Metcalf be considered as defendants, and that the cause thus stand in court.

Counsel for Garsed excepted to the disposition thus made by the court of these two motions, and their exceptions were certified and entered in terms of these provisions of the code of Georgia, applicable to interlocutory orders, &c.

387 After these proceedings, and after some evidence in behalf of Garsed had been taken in the cause by commission, Garsed (as a citizen of Pennsylvania, all the other parties being citizens of Georgia,) procured, at April term, 1867, an order removing the cause to this court. A certified copy of the record was filed here on the 15th of April, 1867, and counsel for Garsed moved this court that the cause be entered here in terms of the acts of Congress. To this motion the counsel for Metcalf and the Bealls filed objections, to the effect that the cause had been dismissed in the superior court, and consequently, that at the time the order of removal was granted by that court, the cause was not pending therein, and for that reason could not be removed.

Without disposing of the objections, and with a reservation of the right of the objectors to be heard upon them at the next term, this court allowed the cause to be entered, and, by consent of counsel, granted leave to the parties to demur, plead, and answer, without prejudice to said objections.

Demurrers were filed in behalf of Metcalf and the Bealls to the cross-bill exhibited by Garsed, which demurrers, after arguments, were overruled by the court, in November, 1861. In the mean
388 time, that is in November, 1867, the court decided on the objections filed by said parties to entering the cause as removed, overruling the same, and holding that the cause was pending in the State court at the time when the application was made for its removal.

When ruling this point the court was of the opinion, and still is, that as Garsed had a right, under the code, to make his answer a cross-bill in the State superior court and as the original bill filed there, and which brought him into a court of equity, prayed for discovery, injunction, and general relief, he, by his cross-bill, could retort a converse prayer, and ask for such relief as a court of chancery could give him; and that the dismission of the original bill subsequently to the filing of the cross-bill, could not effect the latter, for by filing his cross-bill he became entitled to have his consequential rights, if he could show any, adjusted and determined.

At the November term, 1868, a consent-order was taken setting the cause for final hearing on the 30th of that month, either party to have the privilege to take the testimony of their witnesses in open court; and also, that exceptions to the form and return of interrogatories be
389 waived. To this order was added, "B. H. Hill, attorney for Bealls, agrees to this, condition' that he is able to get to court." But he not being present on the appointed day, the cause was continued to the April term, 1869. On the 3d May, 1869, by request of counsel, Joseph P. Carr, esquire, a counsellor of this court, was appointed examiner to take the testimony. Also, at this term the Bealls and Metcalf severally filed their answers to the cross-bill. The answers were placed on file on the 14th of May, and on the same day the cause was continued, and the final hearing set for the first day of the ensuing term. Leave was granted to Messrs. Hill and Gould, solicitors for the Bealls and Metcalf, to take the testimony of Joshua Hill, Glenn, and other persons named in their motion for a continuance, and to do so by the first day of the next term. It may be proper to observe here that, by consent and agreement of the respective counsel on both sides, the Mess'. Beall and Garsed were examined as witnesses by the said counsel, before the examiner, and their testimony returned into court and read at the hearing. In October, 1868, interrogatories were propounded to William A. Beall and Metcalf; and in August, 1869, interroga-
390 tories were again propounded to Metcalf. These were answered, returned into court, and read at the hearing. No cross-interrogatories were offered by Garsed. At the November term, 1869, the cause was argued upon the record transferred from the State court, and the pleadings and evidence exhibited in this court.

The record in this case is voluminous; the reading of it occupied nearly three days, and the discussions of the questions raised by counsel extended to six more.

An almost constant press of judicial duties has prevented me from preparing an opinion in this case at an earlier day.

It was objected for Metcalf and the Bealls that the case is irregularly placed upon the docket of this court, and contrary to the order made

by the State chancellor at the October term, 1866, of the State court; that the Bealls are not really plaintiffs, not persuing Garsed and Metcalf, but that Garsed is seaking the Bealls and Metcalf. If this suit is cognizable in chancery, the mere inversion of the names of the parties, or any of them, upon the docket, or in the record transferred here, would not be an objection of any practical importance, for decrees in chancery are moulded in accordance with the true rights and liabilities
391 of the parties litigant, without respect to their position in the pleadings. This case is in this court in pursuance of one or more acts of Congress, and when removed hither it must proceed in the same manner as if brought here by original process. See act of July 27th, 1866, and of March 2, 1867, 14 Stats., 306, 558.

Preliminary to expressing any opinion on the many and various questions brought forward and discussed prior to and at the final hearing, it is perhaps proper to note that the chancery system of Georgia is in some respects anomalous, and the mode of procedure different from that which prevails in the United States courts when sitting as courts of chancery; for, in the former, whenever a question of fact is raised in a chancery cause, it must be decided by a jury. "The jury and the judge constitute the chancellor." (Hardgroves vs. Lewis, 3 Kelly, 162; Code, 1st ed., § 4116.)

The distinction between law and equity is recognized in the Constitution, and the principal and procedure which, at the period of the formation of the Constitution, so pointedly distinguished legal from equitable remedies in England, have not, thus far in our judicial history, been unsettled by the blending of law and equity. They are still
392 administered as distinct systems of remidial justice. (Const., Art. III, § 2; 7 Amend't Const., judiciary act, § 11, 22.) And so the circuit courts of the United States continue, when exercising jurisdiction in chancery, to decree relief according to the principals and, in general, the practice which prevailed in the parent country, when our Constitution was adopted; and the jurisdiction is co-extensive with the whole country.

Mr. Justice Miller, in pronouncing the judgment of the Supreme Court of the United States in Holliday's case, (3 Wall., 409,) while speaking of the judiciary act of 1789, said:

"The wisdom and forethought with which it was drawn have been the admiration of succeeding generations. And so well was it done that it remains to the present day, with few unimportant changes, the foundation of our system of judicature and the law which confers, governs, controls, and limits the powers of all the Federal courts, except the Supreme Court, and which largely regulates the exercise of its powers."

The Supreme Court, by Mr. Justice Campbell, said, in Hyde vs. Stone, (20 How., 170:) "In this court it has been repeatedly decreed that
393 the jurisdiction of the courts of the United States in controversies between citizens of different States cannot be impaired by the laws of the States which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power." (See also Parsons vs. Bedford, 3 Peters, 433.)

Mr. Justice Davis, in delivering the opinion of the court in Payne v. Hook, (7 Wall., 425,) described in a few words the distinctive features of the chancery jurisdiction of the national courts:

"The equity jurisdiction conferred on the Federal courts is the same that the high court of chancery in England possesses, is subjected to

neither limitation or restraint by State legislation, and is uniform throughout the different States of the Union."

The above reference and citations on the author'ative reply to the alleged injury complained of by the Messrs. Beall, that, by the removal of this case into a court of the United States, they are shorn of the right of trial by jury, guarante'd to them by the laws of Georgia, on all facts arising in the cause. But over this supposed hardship a Federal judge has no control. His duty is to see that the course of the court, which is the law of the court, is not invaded or impaired by State statutes or State modes of procedure. Yet, if Garsed is
394 entitled to relief on the chancery side of this court, he can receive no greater relief than he could obtain in the State court had his cause remained there; and if not entitled to relief there, he is not here. (Ewing vs. City of St. Louis, 5 Wall., 413.)

Although this court, sitting in equity, may, if it pleases, assume to itself the determination of every question suggested by the record, yet, if the facts are strongly controverted, and the evidence nearly balanced, or if the evidence produced before the court in the record is not of a character or is not sufficient to enable it to arrive at a satisfactory conclusion, it will in these, and cases of like nature in general, direct one or more issues to be tried by a jury on the common-law side of the court. And the capasities in which the same tribunal acts on such occasions are as distinct as if the same duties were performed by different tribunals. And it may not, perhaps, be foreign to this subject to remark that the verdict upon an issue out of chancery is, in no just sense, final upon the facts it finds, or binding upon the chancellor; he may wholly disregard it or adopt it sub mod*a*, or grant a new trial, or proceed to hear and determine the cause in contradiction to it. And,
395 as intimated, an issue to try a matter of fact will be ordered or not, according to the sound discretion of the court.

The Bealls, in November, 1867, and Metcalf, in April, 1868, filed demurrers to the answer of Garsed, which answer had been made a cross-bill, under the practice of this State, to the original bill exhibited by the Bealls in the State court against Metcalf, Garsed, and Schley. In November, 1868, the several positions taken by the parties demurring were argued and the demurrers overruled. But no reasons were then given by the court for its decision. (Code, § 4093.)

During the discussion of the demurrer of the Bealls, and again on the argument at the final hearing, their counsel dwelt mainly on the want of jurisdiction in this court, sitting as a court of chancery, to take cognizance of this suit; that it could not entertain the cross-bill, they alleging that the prayer for specific performance, or, in lieu thereof, compensation in damages, was devoid of equity; for a court of chancery could not decree performances in specie for the non-delivery of "chattel goods," or award damages for the non-performance of an agreement for the sale of "chattel goods," and that if Garsed was injured, he
396 had an adequate and complete remedy at the common law.

When the court overruled the demurrer filed by the Bealls, it was satisfied with the correctness of the decision, and the more elaborate argument of the same questions at the final hearing confirmed the mind of the court in the views which it then entertained. On princip*al* alone, it seems clear that the Bealls, the plaintiffs in the original bill, are precluded from questioning the jurisdiction of this court, (whatever Metcalf or Schley, co-defendants of Garsed in the original bill, might urge on that point,) for Garsed being drawn into court by the Bealls, he may avail himself of the assistance of the court without being put

to show a ground of equity to support its jurisdiction. And this rule is equally applicable to a demurrer filed by one or more plaintiffs in an original bill to a cross-bill, upon the ground of a want of equity alone. I have read and collected the following authorities, and I think they sustain the views just expressed: Doble vs. Potman, Hardr., 160; Burgess vs. Wheate, 1 Eden, 190; Sir John Worden's case, mentioned in 1 Blackstone's R., 132; Cartwright et al. vs. Clark, 4 Met., 604.

397 As to the objection of re-arguing at the hearing the same matters raised by the overruled demurrers, the questions involved in this case being intricate, and more than one of them quite novel, I adopted a most liberal and elastic rule, although when a demurrer is denied in a court of equity, the effect is the same as a respondeas ouster at the common law, and the defendant must answer over; yet he may, in his answer, if the court interposes no objection, insist on the same matters presented in the disallowed demurrer, and also invoke additional objections, and profit by them at the final hearing, if his points be well taken and his argument sound. (Penn vs. Lord Baltimore, 1 Ves. Jun., 446.) Moreover, it may be remarked that in the Federal courts, if the question whether a cause is properly cognizable on the chancery or the common-law side of the court be not raised by the pleadings nor suggested by counsel, the court, sua sponte, will determine the jurisdiction. (Parker vs. Winnepiseogee Co., 2 Black, 577; Wright vs. Ellison, 1 Wall., 16; Thompson vs. Railroad Companies, 6 Wall., 134.)

398 Returning to the consideration of the cross-bill: a cross-bill is a mode of defence, and is treated as an auxiliary suit, or dependency on the original suit, and is brought by a defendant against the plaintiffs and the defendants, or some of them, in a former suit depending, touching the matter in question in that bill, and is filed to bring more fully before the court a subject-matter connected with the case made in the original bill, and which is necessary to a termination of a controversy. The original bill and cross-bill are but one cause.

It was assumed by the counsel for the Bealls, in unqualified terms, and by the counsel for Metcalf, in propositions less broad, "that a court of equity will not entertain a bill to enforce specific performance to deliver goods of only commercial value," "or in the alternative of exercising the functions of a jury by assessing damages for the non-delivery of such chattel goods." Brief of Mr. Hill.

I will now offer what I conceive to be the principles and practice by which courts of chancery are guided and controlled in decreeing specific performance and in awarding compensation in the shape of damages, where the subject-matter is chattels personal.

399 Mr. Justice Thompson, in delivering the decision of the Supreme Court of the United States, in the Mechanics' Bank of Alexandria vs. Seton, 1 Peters, 229, while speaking of the power of chancery to specifically execute agreements for lands, or things relating to realty, and contracts for personal chattels, said: "But notwithstanding this distinction between personal contracts for goods and contracts for lands is to be found laid down in the books, as a general rule, yet there are many cases to be found where specific performance of contracts relating to personality have been enforced in chancery, and courts will only weigh with greater nicety contracts of this discription than such as relate to land."

More than a century ago Lord Hardwicke, in Buxton vs. Lester, 3 Atkins, 314, used words of like import.

As a general rule, it is undoubtedly true that chancery will not compel the execution, in specie, of contracts respecting goods, corn, cotton,

and other things of an absolute personal nature, where a compensation in damages in the particular case would be commensurate with the injury sustained, for where the claim is for damages only, a court
400 of law is the proper forum.

Yet this, like all general rules, is, as just seen, subject to qualifications and exceptions; for instance, where the court obtained jurisdiction of the cause on other grounds, or when ingredients of equity jurisdiction are mixed up in the transaction, such as the necessity of interfearance to prevent multiplicity of suits or irreparable mischief to the injured party. (Tayloe vs. Merchants' Insurance Co., 9 How., 398, 405; 2 Story Eq. Jur., § 710 to 719.)

In Parker vs. Dee, (2 Ch., cas. 200,) the lord keeper, Finch, said: "When the court can determine the matter, it shall not be a handmaid to other courts, nor beget a suit to be ended elsewhere." As illustrative of this: when a party had the power to fulfil a contract when the suit was instituted, (or, it is said, even before it was commenced, Andrews vs. Brown, 3 Cush., 130,) and from any cause becomes unable to do so during the pendency of the suit, the court having had jurisdiction at first, can give compensation by way of damages; for if it were otherwise, he could escape the jurisdiction of the court by matters ex post facto. (Denton vs. Stewart, 1 Cox, 258; Blase vs. Sutton, 3 Mer., 248; Woodcock vs. Bennett, 1 Con., 711; see, also, 12 Ves., 401; 17 id.,
401 278.)

Counsel for the Bealls contended that the relief prayed for by Garsed in his cross-bill is not equitable relief, and therefore the court cannot render any decree in his favour, and relied on Story Eq. Pl., § 398.

The case referred to by Judge Story is Calvery vs. Williams, 1 Ves., Jr., 211, 213. The case was this: A bill was filed by Calvery to have a conveyance made to him by Williams of seven acres of land, called C, part of a copyhold estate, sold by auction, and alleged to have been purchased at the sale by the complainant, Calvery. Williams, the defendant, resisted this claim on the ground that he did not intend to include these seven acres in the sale. Calvery having got into possession of the seven acres, Williams filed a cross-bill to be let into possession of them himself.

The court held that Williams did not intend to convey, nor did Calvery buy, this particular land; "and," remarked the lord chancellor, "consequently he has no title to the conveyance, and the bill must be dismissed, but without costs. As to the cross-bill to be let into
402 possession, I cannot decree that; it is merely a legal title, and the object of an ejectment."

Now, it will be perceived that the bill exhibited by Williams is called a cross-bill in the printed report of the case; but, technically speaking, it is improperly denominated a cross-bill. It is apparent that it is in the nature of a bill asking further relief, being on a matter distinct and independant from the subject-matter in question in the original bill; whereas the soundness of a cross-bill depends on its connection with the subject-matter of the orriginal bill.

If the court had been of the opinion that the seven acres were embraced in the purchase of Calvery, it would, I apprehend, have decreed Williams to execute a conveyance to perfect the title. As the matter stood, how Calvery got into possession of the seven acres, whether as an indruder, a deforcient, or a disseizor, were questions which could not be enquired into in that suit.

Williams' remedy was by ejectment or other proper writ of the common law, and not by subpœna.

The point that the cross-bill asks legal relief instead of equitable relief, and consequently that no decree in such case can be
403 given in favour of the cross-bill, having, as already mentioned, been made and contended for as one of the most vital importance in the case, it became the duty of the court to consider it with care. This has been done. I have looked through the books within my reach, but have failed to find any case bearing on the question; none was cited or referred to by counsel. Notwithstanding there are neither decisions of courts nor dicta of judges within my knowledge, yet it does not appear to my mind to be in consonance with those principles which govern equity jurisprudence to say that if the prayer of a cross-bill seeks legal relief it must, for that reason, be invalid. I do not think that the true test is whether the cross-bill prays equitable or legal relief; but the touchstone is: does the answer of Garsed, which is here made a cross-bill, or its prayer, introduce a new controversy, or does it bring up matter growing out of, or directly connected with, the original bill?

Controlled by the facts stated in the pleadings in this cause, I am of the opinion that the prayer of the cross-bill is proper, arises from
404 and out of the subject-matter of the original bill, and comes within the cognizance of a court of chancery, and is in harmony with the principles and practice which obtain in these courts. And, by observing the structure and scope of the bill and cross-bill, it will be found that the latter does bring directly and more fully before the court a subject-matter which is solely connected with the case, made by the forum, and which is essential to a complete determination of the litigation. And it is a principle well settled for ages that whenever a court of chancery is put in possession of the materials to enable it to make a final decree, it will do so to prevent a multiplicity of suits.

Therefore, the views presented on the office of a cross-bill makes it necessary for the court to decide whether the prayer of this auxiliary asks equitable or legal relief.

The bill filed by the Bealls in the State court is emphatically a bill for discovery and relief. It possesses the distinctive elements of a bill of this character, and it prays, inter alia, not only for an injunction
405 against Garsed, Metcalf, and Schley, and an account against Metcalf, but also a prayer for general relief.

It thus placed before the court the broad question whether ther' had or had not been a valid contract for the cotton in dispute. Garsed, in answering this bill, averred that there was a valid and subsisting contract for this cotton, and making his answer a cross-bill, as by the practice of the State court he had a right to do, prayed a specific execution of the alleged contract, or, if that could not be had, compensation in damages.

On the side of Metcalf it was contended that he was a tenant in common, and not a partner, with the Bealls in the 8,678 bales of cotton, and stood in the same legal relation to William A. Beall in the 1,100 bales.

Counsel for the Bealls alleged and argued that Jeremiah Beall bought and possessed the 8,678 bales solely and in his own name, and was alone liable for storage, &c.; that much of it was purchased with his own funds, the remainder being advanced by William A. Beall, and the drafts discounted by Metcalf, "the inducements for such advancements and discounts being that they should have an interest in the pro-
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of disposition." (Brief of Mr. Hill.) And it was further contended, that if such terms could constitute a commercial partnership, it was such only as to the partners themselves, and not as to third persons. And if such terms could constitute a commercial partnership as to the public, it was one in which by express stipulations one partner alone had power to possess, control, and dispose of the partnership assets.

For Garsed it was urged that Metcalf and the Bealls were copartners in the 8,678 bales, and Metcalf and William A. Beall copartners in the 1,100 bales, at the time of the alleged sale to Garsed.

It may here be proper to remark that in noticing the pleadings and testimony, and also the arguments of counsel on both sides, that the issues evolved do not call upon the court to determine whether the parties were tenants in common or whether partnership inter se ex-
407 isted. The legitimate questions are: Were Metcalf and the Bealls, as to the 8,678 bales, and Metcalf and William A. Beall, as to the 1,100 bales, copartners as to third persons?

A partnership may subsist as between individuals and the world, and yet not as between individuals themselves. But whenever the existance of a partnership as to third persons is established, the presumption of law is, it seems, that a partnership exists between the parties themselves. (See Peacock vs. Peacock, 2 Campb., 45.)

Persons who are partners may, if they think proper, agree that one of the firm alone, or two or more jointly, shall have power to possess, control, and dispose of the partnership property. But, notwithstanding such agreement exists, if it be unknown to third parties, when dealing with any member of the firm, it is wholly inoperative as to them. If otherwise, secret arrangements of this nature might work a fraud upon the public who had no notice to warn them. (Winship vs. Bank of the United States, 5 Peters, 561.)

408 It will be remembered that it is stated by the Bealls in the original bill that they had been for a long time, and were then, joint owners with Metcalf, each party owning the equal one-third undivided part of 8,678 bales of cotton, and also that William A. Beall was then equal joint owner with Metcalf of 1,100, in all, 9,778 bales, and of the value of two millions of dollars.

Jeremiah Beall, in the early part of May, 1869, testified before the examiner that in the fall of 1861 he made a verbal arrangement, or had a verbal understanding, with Doughty, Beall (William A.) & Co. and Metcalf for the purchase of cotton in Southwestern Georgia; that he went there in November of that year, and commenced purchasing cotton. He had about $30,000 of his own funds, of which the other parties had notice, and he was to purchase with his own funds first. The money, after that was exhaused, was furnished by William A. Beall, who, with the firm of Doughty, Beall & Co., negotiated all the loans that he used that winter for the purchase of cotton. The purchases were made
409 at Albany, Dawson, Eufaula, (Ala.,) and some small lots at one or two other places.

That in the summer of 1862, William A. purchased the interest of the Messrs. Doughty in the cotton, and witness returned to Southwestern Georgia in the fall of 1862, and recommenced the purchase of cotton, the funds being supplied to him by William A. in the same way. Witness being in Augusta in the summer of 1863, Metcalf said that he had a large amount of money to his credit at the bank, and proposed to pay off the loans negotiated by William A., saying that he supposed we (the Bealls) had as soon pay him interest as the banks. Metcalf took

up these obligations, and the Bealls gave him their notes for the amount, about $400,000.

Cotton advanced and witness commenced selling, and continued to sell till the note was paid, except what was due to himself for advances—some $170,000 or $180,000—which the parties agreed to let remain, and a few other small debts. All the cotton was purchased by him, and in his own name, and so held; that he had the sole possession and
410 control of it, and that all sales were made by him, the bills of sale in his own name, and the warehouse receipts in his hands; "and no one of the firm (parties I mean) had any authority to sell or in any manner to dispose of it," as it was agreed at the first verbal understanding that witness should have the full control and sale of the cotton, "and to account to them for their interest," they and more especially Metcalf, saying that they did not want their names to be known in the transactions. He further states that "their interest was only a silent one—that is, the interests of Doughty, Bealls & Co. and of Metcalf." Witness also says that he had no interest in the 1,100 bales involved in this suit.

The same party, in his separate answer, dated May 11th, 1869, to the cross-bill, after stating that he had the sole and exclusive authority to sell and dispose of the cotton, states that he was liable to account to Metcalf and William A. Beall for their interests in the proceeds of any sales or disposition of the cotton made by him, and that they were entitled to two-thirds of the profits, after deducting all advancements made by him and expenses incurred; that the cotton was bought, stored, &c., in his own name, "said Metcalf and William A. Beall having
415* only a silent interest in the profits."

William A. Beall stated before the examiner, in May, 1869, that in the fall of 1861 there was a verbal agreement between Jeremiah Beall, Metcalf, and Doughty, Beall & Co. to purchase cotton in Southwestern Georgia, and it was understood that Jeremiah Beall should go there and make the purchases in his own name, and take control and management of the purchases generally.

The funds for the purchase of the cotton were to be negotiated for and raised by Doughty, Beall & Co., and to be forwarded as they might be needed; and Jeremiah Beall proceeded to make these purchases, and continued to do so until about May, 1862; Doughty, Beall & Co. furnishing him, in the mean time, with all the funds for payment of these purchases, except about $30,000, advanced by Jeremiah Beall himself.

Witness further says, that in the fall of 1861 it was agreed by Metcalf and witness to make a similar purchase of cotton at Americus, Georgia, Metcalf not being known in the transaction, and witness to arrange for the funds, and to have the cotton purchased in his own name. He purchased at Americus about 2,300 bales, 1,200 of which were burned,
416 leaving some 1,100 bales in the warehouse of Price, and which cottons were stored in his (witness's) name, and subject to his control and management.

He also testified, that "in the summer of 1862 his copartners, the Doughty's manifested a disposition to sell their interest in the cottons bought by Jeremiah Beall in Southwestern Georgia, for account of T. S. Metcalf, J. Beall, and Doughty, Beall & Co., and made a proposition to that effect, which, after some consideration, witness and Metcalf accepted, and bought their interest. During the following fall, (1862,) J.

*Folios 411, 412, 413, 414 missing.

Beall returned to Southwestern Georgia, and continued the purchase of cotton for the account of T. S. Metcalf, J. Beall, and myself, (witness.) He continued to purchase sparingly till the spring of 1863, the money to pay for the purchases being raised and furnished by myself." About August, 1863, "Metcalf proposed to take up the indebtedness of Doughty, Beall & Co. and William A. Beall (witness) for these purchases, saying, we had as well pay him interest as the bank. Myself and J. Beall acceeded to this proposition, and gave our joint note for some $400,000 in favour of Metcalf. Subsequently, in the course of 60 or 90 days,
417 J. Beall made sales of cotton to the amount of 1,500 or 2,000 bales, with the proceeds of which this debt of $400,000 was liquidated." Witness also states, "that the cotton remaining after these sales remained in the warehouse till after the surrender."

This witness, in his answer, May 13, 1869, to the cross-bill, states "that the 9,778 bales, except the 1,100 bales stored at Americus, were bought by Jeremiah Beall in his own name, and, by agreement with Metcalf and this defendant, he had power to dispose of it in his own name, as if sole owner; that William A. Beall (or Doughty, Beall & Co.) should negotiate loans for all the money needed, except what Jeremiah Beall might advance, and that Metcalf should give credit to the paper of Doughty, Beall & Co., or discount their notes; and that, as Jeremiah Beall should see proper to sell the cotton, he should apply the proceeds of the sales to the extinguishment of the debts, and the profits should be divided equally among the parties."

And, answering as to the cotton stored at Americus, he says it was purchased by one Furlow and others, at his instance, and in his name, and could be sold only by himself, though Metcalf had a silent in-
418 terest of one-half in the profits. Metcalf, in his depositions of October 20, 1868, in answer to the third interrogatory, states that he was interested in the cotton in controversy. About 1,100 bales at Americus belonged equally to him and William A. Beall, and the 8,678 bales belonged one-third to Jeremiah Beall, less than one-third to William A. Beall, and over one-third to himself.

This condensed statement of the evidence on the question of partnership or not partnership will enable the court to determine the legal relation of these persons in the cotton to the public.

If they were partners, it is to be presumed that that relationship arose by virtue of the laws of this State. This seemed the view entertained during the discussion by counsel on both sides.

In the autum' of 1861 the argument between Jeremiah Beall, Doughty, Beall & Co., and Metcalf for the purchase of cotton was made, and about the same time a like agreement was entered into between William A. Beall and Metcalf. In the summer of 1862 William A. Beall, who was the Beall of the firm of Doughty, Beall & Co., according to
419 the testimony of Jeremiah Beall, purchased the interests of the Doughtys; but whether for himself alone, or for himself and Metcalf, he does not say. William A. Beall, however, in his testimony, says the interests of the Doughtys were bought by him and Metcalf. But, be this as it may, the Doughtys were no longer members of the concern.

In pursuance of the act of the legislature of Georgia, the code was not to go into effect until January, 1862. This act was assented to December 19, 1860. By an act of the so-called legislature of Georgia, passed in 1861, the operation of the code was suspended until January 1, 1863. As already mentioned, the Mess. Doughty sold their interest in

the cotton-adventures in the summer of 1862. (Thorington vs. Smith, 8 Wal., 1; United States vs. Keehler, 9 id., 83.)

Whether the Bealls and Metcalf, they being residents of this State during the period of the late civil war, were copartners by virtue of the common law or the code of Georgia—supposing the code did not go into operation as to them before January 1, 1863—need not be determined; for, indeed, there is no substantial difference, in essentials, between the former and the latter, as to what constitutes a partner-
420 ship inter se, or in regard to third persons. (Waugh vs. Carver, 2 H. Bla., 246; Grace vs. Smith, 2 W. Bla., 998; Berthold vs. Goldsmith, 24 How., 536.)

The code, § 1889, says: "A partnership may be created either by written or parol contract, or it may arise from a joint ownership, use, and enjoyment of the profits of undivided property, real or personal."

Section 1892 says: "A joint interest in the partnership property, or a joint interest in the profits and losses of the business, constitute a partnership as to third persons. A common interest in the profits alone does not."

The first example given in this section, as to what will make a partnership quoad the world, is as follows: "A joint interest in the partnership property, constitutes a partnership as to third persons." This is a clear petitio principii; it assumes the very point in controversy, "the partnership property;" but this definition or discription need not embarrass the question under investigation; for it will only be necessary to establish that which the code has taken for granted, and
421 the inquiry may as well be made here, if the Bealls and Metcalf were joint owners of the 8,678 bales of cotton, and the cotton so owned was for the purpose of a joint business, and was so employed, and the profits were to flow from the common fund, they would be copartners, and the cotton would be partnership property; and the same rule would, of course, apply to the 1,100 bales owned by William A. Beall and Metcalf.

In support of the position that they were not partners in trade, it was urged that they had no firm-name, and were not known to others as partners, and that they never contemplated such a relationship to each other. Let these statements be admitted; but notwithstanding they did not assume a name, or avoided having one, or were not known as partners to persons dealing with all or any of them, or even that they stipulated among themselves that a partnership relation should not exist; yet if, in contemplation of law, they were partners, their responsibilities are not thereby, in any wise, prevented or lessened to the world. The relation of partnership, as to third persons, may arise by mere operation of law, or it may be shown by the acts of the parties declared against, or by the acts of one of them, the admissions
422 or declarations of another, and conduct of a third. Hozard vs. Hozard, 2 Story, 371; Terrell vs. Richards, 1 Nott & McC., 20; Everett vs. Chapman, 6. Con., 347.)

As to the admissions which were said to have been made by Jeremiah Beall, and by Metcalf in his depositions, and orally to third parties, that a partnership existed, they are governed by the recognized rule of law, that if a party declares or admits to others that he is the partner of A. & B., or either of them, although this may be sufficient to charge him in that character, yet admissions or declarations alone, without more, are inadmissable to establish the fact that A. & B., or one of them, is his partner. (Burger vs. De Tasit, 3 Stark., 53; McCutchen vs. Banston, 3 Kelly, 244.)

By reference to the abridged statement, which I have given of the bill filed by the Bealls, their answers to the cross-bill, and their testimony, and the depositions of Metcalf, it will be found that the original bill avers that the Bealls and Metcalf were, at the time of filing the bill, joint owners, each owning the equal one-third undivided part of 8,678 bales; and that William A. Beall and Metcalf were in like
423 manner owners of 1,100 bales. Jeremiah Beall, in his testimony, states that he was liable to account to William A. Beall and Metcalf for their interest in the proceeds of any sale or disposition which he might make of the cotton, and that they were entitled to two-thirds of the profits, after deducting all advances made by him and expenses incurred. William A. Beall says that when Jeremiah Beall should see proper to sell, he was to apply the proceeds to the extinguishment of the debts, and the profits were then to be divided equally among the parties. Metcalf declares that he and the Bealls were partners, and that he was interested in the cotton, equal owner with William A. Beall in the 1,100 bales, and the 8,678 bales belonging to him and the Bealls in nearly equal parts. William A. Beall says, in his answer, when speaking of the 1,100 bales, that Metcalf had a silent interest of one-half in the profits; and he avers in his bill that he and Metcalf were equal joint owners of this very cotton.

And now what is the fair inference to draw from the facts
424 stated by the Bealls in their bill, in their answers to the cross-bill, and in their testimony, and from the depositions of Metcalf? Were the Bealls and Metcalf, and William A. Beall and Metcalf, partners as to the public in the 8,678 bales, and in the 1,100 bales, respectively? Are there absent any of the elements necessary to constitute such relations in these cotton transactions?

Negative and affirmative answers were made to these enquiries, and the general principles which pervade the law of partnership were made to the court and elaborately commented upon.

I have examined the pleadings and proofs, and I am of opinion that they afford not only cogent but conclusive evidence that as to the 8,678 bales, a partnership in regard to third persons existed between the Bealls and Metcalf, by the law-merchant and the code, at the period of the alleged purchase by Garsed; and that William A. Beall and Metcalf were, when the purchase is said to have been made, partners, as to third parties, in the 1,100 bales. Jeremiah Beall was, by agreement with William A. Beall and Metcalf, to appear to the world as sole
425 owner of the cotton to be purchased and sold; the others were not to be known as concerned in the business. Thus Jeremiah Beall became the agent of his associates, but he was still none the less a principal in the social concern. By a similar arrangement between William A Beall and Metcalf, the former was to be the apparent owner of the cotton which they agreed to buy and sell. The latter was not to be known to the public as a party interested. Indeed, I am unable to conceive from what source a legal doubt could spring as to the existence of copartnerships in these cotton transactions. In the 8,678 bales, each one of the three was a principal in the capital stock; each a principal in the proceeds and results of the adventures; each had a joint interest at the time of the formation of the alleged contract of sale to Garsed, in the business and the profits thereof, and each had a specific interest or share in the profits, as a principal trader. And a like commercial relation subsisted between William A. Beall and Metcalf as to the 1,100 bales when the sale is said to have been made.

Garsed testified that he did not know at the time of the pur-

426 chase to whom the cotton belonged; that he dealt with Schley as a broker, and that Schley was not his agent.

Testimony taken before Mr. Carr, 43–47.

The evidence taken before Mr. Carr shows that Garsed came to Augusta, Georgia, from Philadelphia, Penn., on June 26, 1865, to purchase cotton for manufacturing purposes. The next day he met George Schley, whom he had known previously, who said he had two lots of cotton for sale, one of 2,086 bales, which could be bought at 25 cents in currency, the other of 600 bales, at 18 cents in gold. Garsed examined these cottons, and agreed to pay the prices if he could have to July 6th to answer. The offer was reduced to writing. The following is a copy of it. It is known in the pleadings, &c., as DD.

"AUGUSTA, *June* 28, 1865.

"Mr. JOHN GARSED:

"MY DEAR SIR: (No. 1.) I control 2,089 bales of selected cotton, which you saw this morning at my gin-house, which I agree to sell you, delivered where it is, but reweighed, at twenty-five cents per pound, in greenbacks, payable in Augusta. You have the privilege by the
427 6th of July to close the trade by telegraph, and will, in that event, wait for the money until you can reach here with it.

("No. 2.) I have 600 bales of my own, of the same lot, which you can have for 18 cents in gold, payable here as soon as you can return with it.

("No. 3.) I also control, and will have authority to sell by the 3d of July, 9,778 bales of cotton, stored as follows:

"1,406 bales at Eufaula, Alabama.
"1,194 bales at Dawson, Georgia.
"2,556 bales at H. C. Cook's warehouse, Albany, Georgia.
"3,522 bales at Sims & Rusk's warehouse, Alabany, Georgia.
"1,100 bales at Price's warehouse, Americus, Georgia.

"9,778 bales, which cotton I will sell, delivered where stored, at twenty-three cents per pound, the cotton to be reweighed, and payable in greenbacks. This purchase secured after I telegraph you.

"Very respectfully, yours, etc.,
(Signed) "GEORGE SCHLEY.

"Freight and drayage will be about $5.00 per bale to Savannah; insurance one per cent."

With this offer, Schley handed Garsed the following memorandum,
428 said to have been drawn up by Metcalf. This is known as D.

"Believed to *to* be in very good order, as a whole lot, and to average 500 pounds to the bale. They belong to and w*as* bought by a large planter in Southwestern Georgia, and can this day be bought for 20c. in greenbacks. They are mostly crop-lots entire, and therefore are desirable for spinners, as cotton in that section *are* long staple. There is but very little doubt but that they can be had at that price a short time hence, if a buyer should come out with the cash and go down and see him and the cotton."

These terms Garsed declined, not having the money in Augusta at that time; but said if he had to the 6 of July, same as lots one and two, he would answer by telegraph. Schley added lot three on the note DD. Afterwards, on the afternoon of the same day, (June 28,)

Schley told Garsed that the "parties refused to sell unless money was here to-day." Garsed then said he would forget lot three, as he would not bring a million of dollars for something which he had not purchased. Between 8 and 9 p. m. of the same day, he received the following note, E:

429 "DEAR GARSED: Since you left town I saw the party controlling the large lot of cotton, No. 3, and it is agreed that if you telegraph to take it they will ratify what I have agreed, so this makes it unnecessary for me to telegraph Monday. Write and send by Glasgow how I shall telegraph you, to whose care and how, should it be necessary at any time. I wish you God-speed in your journey—too dark to see how to write more.

"Truly, your friend,

"GEORGE SCHLEY.

"28TH JUNE, 8 o'clock."

The next morning Garsed left for Philadelphia, arriving there on the afternoon of July 5. On the morning of the 6, he went to the residence of General Robert Patterson and exhibited to him DD and E, and asked him if he would agree to furnish $1,700,000 or $2,000,000, to purchase these three lots of cotton; to this he agreed. Garsed returned to his store, and wrote the telegram B:

"PHILADELPHIA, *July* 6, 1865.

"To GEORGE SCHLEY, *Augusta, Ga.:*

"I accept one, (1,) two, (2,) an' three (3) lots in gold and green-
430 backs. Will be sent by next vessel, by Adams Express. Send forward the cotton. I will return by steamer on Wednesday next.

"JOHN GARSED."

Garsed states that after sending off this telegram he received from Patterson & Co. $10,000 in currency, and the same amount in gold, and forwarded them to Schley at Augusta, on account of the three lots of cotton. Garsed returned to Augusta on July 24, and the next day settled with Schley for lots one and two, (2,680 bales,) and the cotton was delivered to him. He then demanded the third lot. Schley said the parties refused to deliver it. The next day Garsed called on General Steedman and stated his business, which was to procure the enforcement of the contract. He referred him to General Grosvenor, (a witness in this case,) who told him to leave the papers, which he did. On August 3 he received Grosvenor's decision in the matter, in his favour, and then left for Philadelphia, to make arrangements to have the money ready by the end of thirty days, the time named in Grosvenor's decision.

431 From the view which I entertain of this case, it is unnecessary to give a history of the controversy between Garsed, Schley, Metcalf, et al. before the military, in reference to the cotton in dispute. It may be found in the pleadings and evidence of the respective parties to this suit, and in the testimony of the witnesses. This controversy may, however, be adverted to more than once in the course of this opinion; but only as a mere incident in the case, nothing more.

On July 7, the day succeeding that on which Garsed sent the dispatch from Philadelphia to Schley, he received the following telegram from him:

"AUGUSTA, GEORGIA, *July* 1, 1865.

"To JOHN GARSED,
109 *Chestnut Street, Philadelphia:*

"I misunderstood parties giving you sixth on number three, the nine

thousand good lot. If you wish the lot, telegraph and I will answer if they will sell. Answer immediately.

"GEO. SCHLEY."

He also states that after receiving this dispatch he continued
432 to send money to Augusta, until he received the following telegram:

"AUGUSTA, GA., *August* 10, 1865.

"(*Received, Philadelphia*, 1865, *o'clock min. m.*)

"To JOHN GARSED,

"109 *Chestnut Street, Philadelphia:*

"Case all settled. Funds wanted in New York. Will telegraph fully to-morrow.

"GEORGE SCHLEY."

Nearly a month prior to the receipt of this telegram, he received the following telegraphic dispatch:

"AUGUSTA, *July* 8, 1865.

"To JOHN GARSED,

"*No.* 109 *Chestnut Street, Philadelphia:*

"Parties owning the nine-thousand-bale lot refuse to sell unless funds here. If here to-day, bargain could be closed; and probably can be on your arrival.

"GEORGE SCHLEY."

It appears that Metcalf furnished Schley with the following memorandum, which Schley showed to Garsed on the 26 August, 1865:

Americus	1,104 bales,	559,281 lbs.,	20c...	$111,856 20
Albany, S. & R. W. H.	3,454 bales,	1,731,774 lbs.,	20c...	346,354 80
Albany, H. I. C. & Co.	2,557 bales,	1,311,495 lbs.,	20c...	262,299 00
Dawson & C.	1,210 bales,	640,518 lbs.,	20c...	128,103 60
433 Eufaula	1,405 bales,	788,954 lbs.,	20c...	157,790 80
	9,730 "	5,032,022 "	.....	$1,006,404 40
(In pencil:)		9,778		
August 26, 1865.		9,738		
		48		

D D, D, E, B, and the telegrams of July 1 and 8, and August 10, are the writings that passed between Schley and Garsed.

Here it may be mentioned that when the original bill was exhibited in the State court, and when Garsed filed his answer in the nature of a cross-bill, the cotton in controversy was, it seems, in possession of the Bealls and Metcalf, and of William A. Beall and Metcalf.

Three thousand bales of that owned by the Bealls and Metcalf were sold to Duffield & Co., on July 31, 1865, at 30c. a pound. This sale was soon after re'cinded. In the spring of 1866, the cotton in controversy, or the greater part of it, was shipped to Liverpool, and was sold or otherwise disposed of by the Bealls and Metcalf; but their consignees having failed, they have realized only five shillings in the pound sterling.

In the case before the court, three lots of cotton are spoken of.
434 Lot one contained 2,080 bales, and was sold by Schley, as the agent of Metcalf, to Garsed; lot two, 600 bales, was sold by Schley, as his own property, to Garsed; for both these lots Garsed paid

Schley, and he settled with Metcalf for his lot. Lot three (the cotton in dispute) contained 9,778 bales, 8,678 of which were the property of the Bealls and Metcalf, and William A. Beall and Metcalf owned the residue, 1,100 bales.

Garsed avers that, with the lots one and two, he likewise and at the same time purchased of Schley—who, he says, was the agent of the Bealls and Metcalf; and also of William A. Beall and Metcalf—lot three; and he further alleges that the several lots one, two, and three were embraced in one entire contract. These alleged agencies and purchase are, by the Bealls and Metcalf, and also by William A. Beall and Metcalf, denied to be true.

The provisions of the code of Georgia on the subject of sales are, in many of their main features, like the 17th section of 29 Charles II; they also contain a clause similar to that found in Lord Tenderdin's act, 9 Geo. IV. The code, section 1952, declares that "to make the following obligations binding on the promissor, the promise must be in writing, signed by the party to be charged therewith, or some person by him lawfully authorized, viz:

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* * * * * * *

"Any contract for the sale of goods, wares, and merchandise, in existence, or not in esse, to the amount of fifty dollars, or more, except the buyer shall accept part of the goods sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment."

Neither the act of Charles nor the code requires that the promise, to be binding, should be signed by both seller and buyer; it is enough if it bear the signature of the party against whom the contract is to be enforced.

And under the English statute, when the writing is signed by the agent of the party to be charged, it is sufficient if he was appointed by word of mouth, and a subsequent verbal sanction by the principal of the promise, signed by the agent, satisfies the statute as fully as if he had received his authority beforehand; and this is but the rule of the common law; for, as the agency may be created by parol, so it may be shown by subsequent parol ratification as well as by oral antecedent delegation of authority. But whether under the code of this State this mode of conferring the power upon the agent to bind the party to be charged, or of sanctioning it afterwards, be sufficient are enquiries that will receive notice presently.

436

Before examining either of these questions it may not be amiss for the court to a'vert to these principles which would govern the several writings given in evidence to show that the owners of lot three were bound by a written promise made by Schley.

The English statute of frauds does not require that the whole terms of the bargain for the sale of goods should be agreed to at one time or in one writing; nor does the code of Georgia, I apprehend, differ in this respect from the British statute. It may be on one or many pieces of paper, but the pieces of paper must contain the whole bargain. "The word bargain," said Mr. Justice Nelson, in Salmon Falls Manufacturing Co. vs. Goddard, 14 How., 446, "means the terms upon which the respective parties contract." The papers must be physically joined, or the signed paper must be connected by definite reference to the other written papers, as *as* to leave no uncertainty as to the meaning and effect of all of them; for whenever the bargain is to be made out of separate written papers, the connection cannot be established by extrinsic evidence. If, however, one of the written papers refers to another, parol evidence is available to prove what written paper

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is so referred to. (Kenworthy vs. Schofield, 2 B. & C., 945; Parkhurst vs. Van Courtland, 1 John.'s Ch., 273; Ide vs. Stanton, 15 Vermt., 635; Clinan vs. Cooke, 1 Sch. & L., 22.)

Counsel for Metcalf took the position and contended, as also did counsel for the Bealls, that to enable an agent to bind his principal by a written promise for the sale of goods to the amount of $50 or more, the code requires that his authority to act must be in writing also, and relied upon section 2160: "The act creating the agency must be executed with the same formality (and need have no more) as the law prescribes for the execution of the act for which the agency is created."

No authority was presented to the court by counsel on either side wherein this section had received a construction; and, so far as my own researches have extended since the discussion, I have failed to
438 discover any case in which it has ever been alluded to.

Under the 17th section of the statute of Charles the Second, as already observed, the creating of the agency for the sale of goods above the value or price of ten pounds sterling may be by parol; but is this the law of this State, or does it require the appointment to be in writing where the agent can bind his principal only by a writing?

It was urged on the part of Garsed that the code does not conflict with the English statute, and that if the appointment of the agent by words alone be good under the latter, it is equally so under the former; and also that the term "formality" as used in the code has reference only to agreements where the agent cannot bind his principal otherwise than by writing under seal.

I cannot assent to place the word "formality," as it is employed in this section, within a sense so confined; for I do not think the legislature intended that it should be so limited and bear a meaning so narrow. The section is peculiar and must be very embarrassing in commercial and other every-day transactions; but its language is plain
439 and direct, that the formality creating the agency shall be commensurate with that which the law ordains for the performance of the act for which the agency is created. By § 1952, to make the bargain for the sale of goods, to the amount of $50 or more, binding on the promissor, the promise must be in writing, signed by himself or some person lawfully authorized, unless the buyer shall accept part of the goods sold and actually receive the same or give something in earnest or in part payment. Now, the act of the agent, the writing, the promise, to be obligatory on the principal, the party to be charged, must, as remarked, be in writing; and § 2160 declares in explicit terms that the act creating the agency must be executed with the same formality as the law requires for the execution of the act to be done by the agent. If the construction which I have given to these two sections of the code be correct, Schley was not lawfully empowered to make a promise or agreement in writing for the sale of lot three. And therefore it becomes necessary to further consider the legal efficiency or inefficiency of the several written papers transcribed above, and whether, when
440 combined, they fulfil the requirements of the 1952d section of the code.

It is a long recognised rule of the common law, that when the act of the agent must necessarily be done by a writing under seal, and he has acted without authority, the ratification must be under seal also. And, on principle, it would seem to follow that when a particular formality or mode is necessary to constitute the agency the confirmation must have the same formality. For the purposes discribed in § 1 and § 3, 29 Charles II, c. 3, the agent to make the contract must be authorized by

a writing, and a subsequent verbal recognition of the contract will not extract it from the reach of the statute. (McDowell vs. Simpson, 3 Watts' Pa. R., 129.)

In Story et al. vs. Schultz et al., 1 Hill, So. Car. R., 465, it was held by the court of appeals, that where a parol authority had been given to a sheriff (and whom the court under the facts which pervaded the case considered the private agent of the appointer) to sell and convey land, though void under the statute of fraud, yet, as the principal admitted the fact in an answer in chancery, this was deemed a confirmation of the act.

441 Nevertheless, in cases under the code of this State, where the agent must be empowered by writing, and he has acted without any authority, or in persuance of a mere verbal appointment, there may be subsequent acts of the principal, though not in writing, which would validate the promise or agreement.

It was also insisted that Schley acted by virtue of a del-credere commission from Metcalf. A del-credere commission conferred by parol would, under § 17 of the statute of Charles the Second, be sufficient to authorize the broker to sign a memorandum, binding upon his principal, for the sale of goods of the value or price of ten pounds sterling; or, when the bargain is struck, and the broker becomes the agent of both seller and buyer, to make bought and sold notes. But the interpretation which I have given to § 2061 of the code also applies to a verbal del-credere appointment, and to bestowing oral authority on the broker to sign bought and sold notes, and, likewise, to the mode or formality of ratification.

Max. Friedman, in his evidence taken by commission, on the
442 25 January, 1867, states, in substance: Was in Augusta during the greater part of June and July, 1865. Metcalf came up to me, saying, "You were a great fool that you did not purchase that lot of cotton of me that I wanted you to buy." Mr. Garsed, a man from Philadelphia, to whom I sold it, is now on his way up here from Savannah with his money, but is ditained on account of low water in the river. I would give him $200,000 to let me off from the sale. Metcalf said to me, that money you could have made easily, and explained then to Colonel Waldenger (who was present) that I contemplated buying that lot of him. I said then that the lot was too large for me, as there were nearly 10,000 bales, and Metcalf had told me, in a former conversation with me, when he offered me that lot, that it could not be divided, as there were several persons interested in the cotton. This explanation was given when I offered to take 1,000 or 1,500 bales. The conversation, when I talked of purchasing the cotton, was in June. When he told me John Garsed had purchased it, was from the middle to the latter part of July.

To the cross-interrogatory the witness says: At the first conversation no one was present. When he told m' he had sold to Garsed,
443 Col. Waldenger was present.

G. A. Roth, in his depositions of January 25th, 1867, says that he came to Augusta in June, 1865, to purchase cotton for himself and others. Witness asked Metcalf if he had any cotton for sale, to which he replied, saying that he was very sorry that he had not some, but he had sold all of his cotton. I asked him if he had any objection to tell me to whom he had sold it. He said he had sold the cotton to Mr. John Garsed, of Philadelphia, and that he would rather have lost $500,000 than to have done it.

This conversation took place July 15, 1865.

C. H. Grosvenor, a witness, testified before the examiner that on one occation, prior to the 26th July, (it was on July 26 that Garsed first called upon the military to enforce the alleged contract,) Metcalf told him that he had been notified that he had received a pardon, or had a pardon granted to him; that it had cost him a great deal of money, and that there was much rascality connected with the pardon business, and that if he had been certain from the first he would get
444 a pardon, he would be worth, on that day, $200,000 more than he was. Witness asked him if the pardon had cost him that amount of money. "He said it did not, but that, having fears about his property, he had sold a large amount of cotton which he would otherwise have held. He referred to his sales of cotton in several conversations which took place about that time; and in these conversations he stated that George Schley was a man whom it would be well for me to watch in connection with cotton operations; and he then for the first time gave me a history of a cotton transaction, which I have known since as the Fry affair." He told me that the cotton sale to which he had referred in talking about his pardon was to a man in Philadelphia, for whom he was looking on a small boat then running on the Savannah River. He did not tell me his name at the time. He said that he and Schley had sold to him over thirteen thousand bales of cotton. A part of it was the same cotton which Schley had saved for him at Augusta, and the balance was at other places, none of the names of which I remember except Albany and Eufaula. He said that the cotton outside of
445 Augusta was owned by himself and the Bealls, and he said the money to pay for that cotton had been furnished by him, and they had picked up the lots of cotton; that his partners, the Bealls, were dissatisfied with the sale he had made of the cotton, and he expected to have trouble about it; and he used precisely this language: "I thought as my money had bought the cotton I might use my own judgment about selling it."

Witness further stated that he first saw Garsed on July 26, and that on the afternoon of that day he went away from witness's house down McIntosh street, past the office of Metcalf, and in a very few minutes Metcalf came in and stated to witness that the man who had just passed there was Garsed, to whom he had sold his cotton, and asked what he wanted with witness. "I told him," said witness, "what Garsed wanted with me, and stated the substance of what Garsed claimed, and told him I had declined to have anything to do with it. Mr. Metcalf expressed a regret that I had taken that view of it, and said he would rather I would settle the controversy between them, and stated that he stood in such a position between Mr. Garsed and his partners in
446 the cotton that he would prefer to have somebody else settle what should be done."

Witness also testified that "the paper marked Exhibit DD, attached to the answer of George Schley, and the cotton numbered three, (3,) were the same cotton in dispute before me.

"Mr. Metcalf, during these proceedings, made his statement, and had a great many conversations and controversies with George Schley in my hearing. He never, in my hearing, disputed or contradicted the statements made by Schley as to his authority to sell the cotton to Garsed; but he constantly urged two propositions or reasons why he ought not to be compelled to perform the contract. First, he claimed that his partners were dissatisfied, and that he ought to have consulted them; and, second, he claimed that Garsed never had the money at

Augusta to pay for the cotton, and was himself in default under the contract."

On the cross-examination on the part of Metcalf, witness was asked:

"Do you state that Metcalf told you distinctly that he and Schley had sold Garsed over thirteen thousand bales of cotton?

447 "He spoke of the cotton on which he had lost money by an early sale as thirteen thousand bales, or about that figure.

"You state in your direct testimony that you declined Mr. Garsed's request to decide the controversy between him and Metcalf, and gave your reasons for it. What were the reasons you gave?

"I cannot state all the reasons I gave, but one was, I remember, I told Mr. Garsed that it was the policy of the military authorities at Augusta to avoid, as far as possible, having anything to do with private controversies. I made my condition of health another reason, and I may have given others."

The third question propounded by the Bealls in their cross-examination of this witness, and his response, are as follows:

"Did not Mr. Metcalf, if he made the admissions to which you testify, also tell Mr. Schley that he had no authority from the Bealls to make the sale?

"He did state to Mr. Schley, in my presence, that the Bealls were not consulted about the sale made to Garsed, and were dissatisfied with the sale as made. He said nothing either way about his own 'authority.'"

448 A witness, W. C. Jones, testified before the examiner as follows:

"Some time in July—in the early part of July—eighteen hundred and sixty-five, Mr. Metcalf, in conversation with Mr. James Gardner, at his office, and with myself, mentioned that he had a large lot of cotton in Southwestern Georgia—probably about ten thousand bales—I do not recollect the exact amount; said he would like very much to have it in Augusta. I told him I thought it could be arranged through Mr. Wallace, president of the East Tennessee road, and that I would endeavour to have it done, as I was well acquainted with Mr. Wallace. He remarked that he would give some twelve or fifteen dollars per bale to have it delivered in Augusta. The next day I commenced a correspondence with Mr. Wallace's son, who had charge then of the East Tennessee trains, relative to his taking the contract. I think it was probably ten or twelve days before Wallace could arrange with the other roads to let it pass over. I then received either a telegraphic dispatch or a letter from Charles Wallace, telling me that he thought

449 the arrangement would be completed in a few days. I so informed Mr. Metcalf. His answer to me was that he had sold the cotton, or that the cotton was sold, but he presumed the parties purchasing would like to make the same arrangement. He did not name the purchaser. My impression is he said that most of it was at Albany. Metcalf transacts his business generally through an agent, I believe, but cannot speak from my own knowledge. I can say for myself that I have had several transactions with Mr. Metcalf, but always directly with him."

James W. Stinchcomb, another witness, deposed that "some time in July, eighteen hundred and sixty-five, or in the forepart of August, Mr. Metcalf said to me that Mr. Schley had sold a large lot of cotton for him—the amount I do not remember exactly. My best recollection is that it was from twelve to fifteen thousand bales. A portion of it was in Augusta, Georgia; another portion in a town that was called Americus or America. I think it was Americus. Another place at which I remem-

ber a portion of it was Eufaula or Eufoley, or some such place in Alabama, and two or three other places—I cannot call to mind their
450 names. I understood him to say that Mr. Schley was interested in the Augusta cotton, and a Mr. Beall or Bealls—I don't remember which—were either interested in all the balance or a portion of it, and I cannot remember which; that he had sold too early; cotton was now on the rise, and that his idea of the law was that he could refuse to deliver the cotton, pay the difference between the contract price and the price on the day that he was to deliver it. He then asked me if that would be such a compliance with his contract as would be sanctioned by the military authorities. I told him I supposed it would. Within a very short time after this conversation took place, we had another conversation in substance the same as that I have repeated. I was at that time acting as the principal clerk in the office of the provost-marshal-general of Georgia. I reside in Logan, Hocking County, Ohio. My occupation has been practicing law sense eighteen hundred and forty-eight, except during the war.

I am not able to say whether he used the name of the person to whom the cotton was sold, or whether he said a Philadelphia man. I
451 am not able to state whether these conversations were before or after Garsed had presented his claim to the provost-marshal-general, but my impression is that the first conversation took place during the time that General Steedman and General Grosvenor went to Macon—I believe it was to meet the governor of the State.

Grosvenor and Steedman left Augusta for Macon on or about the 22d July, and it was after Grosvenor's return to Augusta that he first saw Garsed. (Printed testimony, 9 and 10.)

Metcalf, in his depositions, taken by commission, October 24, 1868, and in August 19, 1869, denies that he admitted to any of these witnesses that he or Schley, or he and Schley, had sold the cotton in controversy.

Courts of justice cannot be too cautious in receiving oral admissions, for it not unfrequently happens that the witness, by unintentionally altering a few of the expressions used, gives an effect to the statement at variance with what the party actually did say. But, on the other hand, when the declaration or admission is deliberately and intelligently
452 made, and is precisely identified, the evidence it affords is often of the most satisfactory nature.

It is a rule, that in an answer in chancery, the acknowledgements or admissions of one defendant are evidence against his co-defendants in privity with him; and, by parity of principle, the admissions of one partner, after it is established that a partnership exists, are evidence against his co-partners as to any matters between the firm and other parties.

And the act of one partner is considered the act of the whole partnership, or of all the partners, when the act done is within the scope of the business of the association. (Van Reimsdyke vs. Kane, 1 Gall., 630; Harman vs. Johnson, 18 E. C., L. & E., 400; Clayton vs. Thompson, 13 Ga., 206; Miller vs. Hines, 15 id., 197.)

And it seems to me that the true doctrine of partnership liability may be stated thus: If two or more agree to carry on a business to buy and sell, or to join in a single adventure, and share the profits of the business or adventure, each is a principal and each is an agent for the other, and each is bound by the other's contracts and admissions in carrying on the general or particular business, as much as a single principal
453 would be by the act of an agent, who was to give the whole of the profits to his employer.

In behalf of the Bealls, the question was made, that even admit-

ting that partnerships did exist as to the cotton in dispute, yet that Metcalf had no authority to dispose of it, and consequently the Bealls were not *not* liable.

Although partners may, at their own pleasure, amplify or narrow the power of each other in the management and disposition of the partnership property, yet third persons are not affected by such arrangements, unless they have notice or knowledge of them. If Metcalf, under agreement with his copartners, was prohibited from selling the cotton, no evidence has been produced to prove that such prohibition was known to Garsed at the time of his alleged purchase.

The elements necessary to a valid contract, under section 1952 of the code, for the sale of goods, where they amount to or exceed fifty dollars, are, that there be a promise in writing signed by the party to be charged, or his authorized agent; or if the promise or agreement be by
454 words alone, (for the provisions of this section do not prohibit, but, on the contrary, presuppose verbal agreements,) something additional must be done to bind the promissor. The buyer must accept part of goods sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment; and when either of these things is done, the previous parol agreement is vivified; the superadded act uniting with it, thus consummates the contract.

After inspection of the answers of Metcalf to the original bill and cross-bill, and his depositions, and the testimony of the witnesses, Friedman, Roth, Grosvenor, Stinchcomb, and Jones, I am clearly of the opinion that he did make the declarations and admissions as stated by the witnesses, and that they were not made hastily and inadvertently, but carefully and understandingly. But before considering their legal effect, it may again (at the risk of repetition) be noted that Garsed first came to Augusta on June 26, 1865, and after the negotiations with Schley, he left for Philadelphia on the 29, and arrived there on July 5. He returned to Augusta July 24, and on the day following lots one
455 (2,086 bales) and two (600 bales) were delivered to him. For these he settled with Schley, and then demanded lot three, (9,778 bales,) and was informed by Schley that parties declined to deliver it. On the 28, he called on General Steedman to procure the enforcement of the contract. He referred him to General Grosvenor, provost-marshal-general. Garsed called on him, and left his papers, and on the morning of August 3 he received the decision in the case.

The original bill contains this order of decision. It is too lengthy to be transcribed here. It recites that "the civil authorities of the State of Georgia and civil law are in suspension, and martial law still being in force," &c., it orders that "the contract heretofore recited shall be strictly executed." It contains this clause:

"And it is further ordered, that thirty days may be given from the 1st day of August, 1865, to the said Thomas S. Metcalf, Jeremiah Beall, and Amos (sic) Beall, to procure a revocation of this order."

It is dated August 2, 1865, and signed as follows: "By command of Major General Steedman: C. H. Grosvenor, brevet brigadier general and P. M. G."

During the investigation or trial before the provost marshal,
456 George made a written statement concerning the alleged contract of sale. This may be found on pp. 97, 98, and 99 of the printed testimony.

It was insisted by counsel for Garsed that this statement made by Schley was legitimate testimony, and ought to be received as such in this court, "because," said the counsel, "military may govern when

civil tribunals do not exist," citing Ex-parte Milligan, 4 Wall., 141–2, and that "Schley's testimony was taken before a competent military court."

On the pages referred to by counsel, Chief-Justice Chase says: "There are, under the Constitution, three kinds of military jurisdiction: Military law, military government, and martial law proper." Under which of the three forms of military jurisdiction the provost-marshal-general took cognizance of the controversy concerning the cotton, does not distinctly appear upon the papers presented here, but it may be inferred from the recital in the order or decision, approved by General Steedman, that it was under martial law.

When Garsed called upon Grosvenor, he exhibited to him author-
457 ity from the War and Treasury Departments to come South and purchase cotton for manufacturing purposes. Grosvenor declined to have anything to do with it. A few minutes after Garsed left the office, Metcalf came in, and, says Grosvenor, in his testimony, "he said he would rather I would settle the controversy between them, and stated that he stood in such a position between Mr. Garsed and his partners in the cotton that he would prefer to have somebody else settle what should be done. Some time in the next twenty-four hours, after a long talk with General Steedman, he directed me to investigate this case and dispose of it. Thereupon on some day prior to the second day of August, in the same year, I undertook the investigation."

From this uncontradicted statement, it would seem that General Grosvenor did not at first entertain the controversy between the parties as a magistrate invested with authority, by law, to hear and adjudge causes ex contractu, but began merely as a referee.

The Supreme Court of the United States, the highest tribunal in the land, in the case of The Grapeshot, 9 Wall., 149, said: "The
458 object of the National Government, indeed, was neither conquest nor subjugation, but the overthrow of the insurgent organization, the suppression of insurrection, and the re-establishment of legitimate authority. But in the attainment of these ends through the military force, it became the duty of the National Government, whenever the insurgent power was overthrown, and the territory which had been dominated by it was occupied by the national forces, to provide as far as possible, so long as the war continued, for the security of persons and property, and for the administration of justice."

The court decided that the President, as commander-in-chief, had full authority, under the Constitution, to ordain and establish provisional courts during the rebellion. Notwithstanding, at the time when the provost-marshal-general entertained proceedings in the cotton controversy, war was no longer flagrant, the insurgent armies having some time previously laid down their arms, yet it was not until August 20, 1866, that the President proclaimed the rebellion at an end. United States vs. Anderson, id., 56.

There is no evidence before the court, nor does it judicially
459 know, that the President established or warranted the establishing, in Georgia, of a provost-marshal court as a tribunal, with authority to take judicial cognizance of controversies of this character.

Although the arguments of the counsel for Garsed were, on this subject, ingenious and plausible, yet they failed to convince. As the statement made by Schley before the provost-marshal-general is not a judicial paper or record, it must be excluded.

As to the other positions taken, "that the statement is admissible upon the ground that it is the declarations of Schley against his interest, and that he is dead."

Of the decease of Mr. Schley I have no doubt whatever, but until the fact is judicially brought to the knowledge of the court and made matter of record, no opinion whatever will be expressed upon this question.

That Mr. Metcalf is deceased, the court has judicial information.

Counsel for Metcalf and the Bealls insisted that, upon the entering of the order to dismiss the original bill, this threw Schley out of court, and that there has been no order retaining him.

460 I have already given it as the opinion of the court that, when a cross-bill is filed, the original bill cannot be dismissed, for if the plaintiffs could thus withdraw, it might prejudice the rights of the party who exhibited the cross-bill, and would oust the court of its jurisdiction over the cause. A complement to this principle is, that his co-defendants must, likewise, whether he has prayed relief in his cross-bill against any of them or not, remain in court; otherwise he would be divested of any aid which their pleadings or other defences might give him. Besides, if they were permitted to retire, it would deprive him of the right to have a decree against a co defendant, should a proper case arise on the pleadings and evidence between the plaintiffs and that co-defendant. It would, moreover, destroy the prime advantage of a cross-bill, a cross-examination of the plaintiffs or of a co-defendant. Other equally cogent reasons might be offered, but let these suffice. Therefore, the court will consider the answer of Schley, and which is here as a part of the record transferred from the State court, as properly

461 before it. The legal force of this answer, whatever it may be, will be passed upon hereafter.

The bill called upon Schley, as it likewise did upon Garsed, to answer, under oath, all the matters and things therein stated and charged.

But it was contended by the same counsel that his answer is not so responsive to the bill as to make it evidence, and, therefore, it is not to be noticed. Schley was solemnly required to admit or deny the allegations in the bill, and if he has not done so, his silence admits it, provided the facts are either directly charged to be within his knowledge, or may fairly presumed to be so. But if the matters alleged in the bill are not within either of these descriptions, and he has omitted to notice them, or has evaded them in his answer, the plaintiffs had it in their power to except and make him answer directly, or they could go to issue, relying upon other evidence to prove the facts; and if, in such case, they did not except, they themselves must prove the allegations. From the range the discussion took, I have deemed it necessary to point out these distinctions. Schley exhibited his answer in the State

462 court, so also did Metcalf, and Garsed filed an answer, and afterwards his answer in the form of a cross-bill there. And under the State practice "no replication shall be filed and no order setting the case down for trial, but the parties may commence to take testimony as soon as the bill is filed," (code, section 4109,) and served. The practice on these points is different in this court. But mere rules of practice do not affect the principles which control courts of justice, nor the rights and obligations of parties.

It was further argued that Schley's answer is not evidence against his co-defendant Metcalf. True, as a general rule, the answer of one defendant is not testimony against another who is in reality a co-defendant; for, among other reasons which suggest themselves, the plaintiff might so shape his bill as to draw from the defendant evidence to charge his co-defendant, and exclude such matters as might discharge him; and as there is no issue between the defendants, there is no opportunity for cross-examination. But this reason is inapplicable where the answer is

responsive to the bill, and discloses facts unfavourable to the
463 plaintiff, and consequently favourable for a co-defendant. When this is the case, the answer may be read in behalf of a co-defendant. (Field vs. Holland, 6 Cr., 8.) To ascertain its responsive character, it is well to ask whether the matters required to be answered would be proper to propound to a witness on a trial at law; whether the answers would be relevant, and such as a witness would be bound to answer, and whether the answer would be competent evidence against the interrogating party.

It was also said that the order of the State chancellor made Garsed plaintiff and the Bealls and Metcalf defendants, but would this fact change or affect the individual and relative rights and liabilities of the parties litigant in this suit? Surely not.

The bill states that Metcalf, for certain reasons—reasons not antagonistic to the plaintiffs, but solely of a personal nature—refused to become a co-plaintiff; consequently they made him a defendant. But notwithstanding he is named a defendant, his situation before this court is different from that of Schley and Garsed. For though nominally a defendant, yet in reality he is a plaintiff, because his interest is
464 their interest—they all claim to have been co-owners of the cotton in litigation at the time of the alleged sale; his object is their object—to show that the cotton was not sold to Garsed. Nor does the bill charge Metcalf with colluding or confederating with any one to defraud the plaintiffs. With these facts upon the pleadings and in the evidence, it is obvious that the plaintiffs cannot avail themselves of the answers of Metcalf, who is substantially, though not in form, a plaintiff.

To these observations it may, as pertinent to this case, be added that a party defendant may be a witness for himself where he is allowed to testify by consent of his adversary, and his evidence will operate for him as well as for his co-defendant. (Fletcher's Administrator vs. Sanders & Weer, 7 Dana, 345.)

And it would seem, upon like principle, that when a deposition of a party plaintiff in chancery is taken at the instance or by consent of the defendant, or is read without objection, it is testimony for him and also for his co-plaintiff, for the defendant, by consenting that the plaintiff shall depose or testify, or by permitting his *his* testimony to be
465 read without oppposition, make him his witness. And the parties, plaintiffs as well as defendants, may reciprocally require and use the testimony of each other upon a bill and cross-bill for the purpose.

The statements in a bill which have not been verified, are not to be taken as conclusive against the plaintiff as admissions by him. But where the bill has been sworn to, as is the case in that filed by the Bealls, without doubt the party would be bound by its statements, so far as they are direct allegations of fact. And the admissibility and effect of the answer of the defendant is, I apprehend, governed by the same rules.

It seems to be conceded, during the discussion at the hearing, that there was no dispute as to lots one and two. But be this as it may, these lots were delivered to and accepted by Garsed, and he settled with Schley for them. Schley was sole owner of lot two, as was Metcalf of lot one; and for this lot Schley paid Metcalf. The receipt of this money was a confirmation of the contract of sale of at least this particular cotton, lot one. Consequently, it is needless to enquire
466 whether, for this particular act, he had a parol or written au-

thority, or whether he sold lot one without any authority. (Owings vs. Hull, 9 Peters, 607.)

Where the acceptance of a part of the goods sold is relied upon to release the bargain from the grasp of section 1952 of the code, it must be an acceptance of a part of the goods sold under an entire contract. For where the contract is indivisible, one and entire in its essence, the acceptance, or, more accurately speaking, the acceptance and actual receipt of any part of the goods sold, or part payment of the price, makes the contract good for the whole. Yet I cannot conceive that the code means that the acceptance and receipt must be such as to make it clear that all the terms of the bargain are mutually agreed upon. On the contrary, I think the code leaves it still open to the purchaser to object to the quantity, quality, &c., of the residue. And where there has been an acceptance and receipt of all the goods sold, or of a part only, or where there has been a partial payment, still, a dispute may spring up between the seller and buyer as to the price or value, or whether
467 the sale was for ready money or on credit; controversy may also arise between the parties, where a part of the goods has been accepted and received, as to whether the remaining part is to be of a particular quality, or delivered on or by a day prefixed, or within a reasonable time, or at a certain place or places. Other examples could be given, but it is needless to do so. And when litigation does arise upon any of these or similar questions, the law will determine the dispute by leaving it, if necessary, to parol evidence to show what the precise terms of the bargain were; what was the understanding and manifest intention of the parties when the transaction was entered into. I presume the following cases may be cited to sustain the construction, which I have given to § 1952 of the code, and also upon this suggestive subject as to what I have said on the admissibility of verbal testimony. (Scott vs. The Eastern Counties Railway Co., 12 M. and W., 33; Morton vs. Tibbetts, 15 Q. B., 428; Tompkinson vs. Staight, 17 C. B., 697; Cusack vs. Robinson, 1 B. & S., 299.)

"In order to make a case out of the statute (of frauds) upon
468 the ground of part performance of a parol contract, it is not only indispensable that the acts done should be clear and definite, and referable exclusively to the contract, but the contract should also be established by competent proofs to be clear, definite, and unequivocal in all its terms." Such is the language of Mr. Justice Story in his Equity Jurisprudence, (§ 764,) in speaking of the specific performance of contracts. And the rule is directly applicable where a party, plaintiff or defendant, by his voluntary act makes it impossible for him to perform the agreement in specio, for, in such case, as the party who seeks redress cannot have the contract specifically enforced, he may call upon the court to decree to him compensation by way of damages.

As the evidence shows that lots one and two were delivered to, accepted, and paid for by Garsed, it is clear that the property and possession in them passed.

Appropriate to this, it may be mentioned that it is a rule of law that where goods (not specific) are sold, but something remains to be done by the seller for the purpose of putting them in a deliver-
469 able state, no property passes by the contract of sale. Now, suppose there was a contract of sale for the three lots, and the contract is found to be entire in its nature, and that lot three was to be paid for at a fixed price, per bale or per pound, or the value was to be inferred by law, and, by the terms of the bargain, the seller was to count or weigh the cotton, the enumerating or weighing would be a con-

dition precedent to the transfer of the property in this cotton; for, until the prerequisite is fulfilled, the precise number of bales or pounds in the lot could not be ascertained, the gross sum or price being made to depend upon the number or weight.

It was urged as a good defence for Metcalf and the Bealls, that Garsed had no money in Augusta to pay for lot three, eaven if he had purchased it; and that he settled for the other lots by bills on Philadelphia.

Now, there is no principle in equity jurisprudence more firmly established than that a party—plaintiff or defendant—who asks the aid of a court of chancery, must show that he has performed his part of the agreement, or has been prevented from doing so by the conduct
470 of the party against whom he prays relief. When Garsed received the two lots and settled for them, he demanded lot three. He testified, also, that he then had over $100,000 in Augusta; and this statement is corroborated by the testimony of General Robert Patterson, of Philadelphia, who says that he "was ready at all times to furnish all the money required to fulfil the contract, and did raise all that was used—that is, what paid for lots one and two, and $100,000 besides.

If there was a contract for all the lots, and lot three was to be delivered simultaneously with or immediately after the other two were received and paid for, and he demanded the remaining one, that, of itself, would be prima-facie proof of readiness and willingness to perform his part of the agreement. Or, if it was a prerequisite to the delivery that the quality or weight should be ascertained, a tender of the price could not be made, for, prior thereto, the buyer could not know what sum to tender, nor the seller, in all probability, what amount to accept.

The arguments for the Bealls and Metcalf were not pointed to
471 that part of the question which raised the inquiry, whether, if there was a contract for the three lots, it was indivisible or divisible. The main position taken by them was, that no contract ever existed for lot three, and that neither they, nor any of them, had done anything in the premises which would make them liable to Garsed; while, on his side, it was contended that he had purchased the three lots as one contract, and that it was indivisible; and that if the contract was invalid under that clause, in section 1952, which requires the agreement or promise to be in writing, yet, as he had received and accepted a part of the cotton embraced in the contract, and had paid part of the purchase-money, and the principal had ratified the acts of Schley, who sold the cotton, these acts, or any one of them, took the contract out of the operation of the code.

These are, if my memory serves me, substantially the views presented by the respective counsel on this branch of the case.

472 I will here give a resumé of some matters which I stated more fully elsewhere. To make the contract valid in the first instance, there must be a promice in writing, signed by the promisor, or his agent, or there must be a delivery of the goods, or a part of them, or a proffer of all or of a portion by the seller, or a payment or tender of payment or earnest given by the buyer, and if none of those requisites are performed, it is no contract, and the owner or owners may dispose of the goods as they please. The court has ruled that Schley was not, under the provisions of the code, lawfully empowered to bind Metcalf, or the Bealls and Metcalf, or William A. Beall and Metcalf, by a written promise for the sale of lot one, owned by Metcalf, or lot three, the property of the others. Schley and Metcalf, as remarked more than once, were

the owners of lots two and one, respectively. To sell this lot, Metcalf appointed Schley his agent by parol. This appointment, and the acts of Schley in pursuance of it, would be ineffectual to bind Metcalf,
473 but the subsequent conduct of Metcalf released the verbal sale from the positive rule of the code, for Schley's delivering the cotton to Garsed, and Metcalf's accepting payment for it, is a sufficient compliance with the law.

Section 2687 of the code does not, I think, define or describe, give the distinctive properties which are essential to constitute an entire contract. It says:

"A contract may be either entire or severable. In the former the whole contract stands or falls together; in the latter the failure of a distinct part does not void the remainder. The character of the contract in such case is determined by the intention of the parties." The next section says: "In some cases even an entire contract is apportionable, as where the price to be paid is not fixed, or is by the contract itself apportioned according to time, so if the failure of one party to perform is caused by the act of the other, the contract may still be apportioned."

See § 2597 as to entire and divisable contracts of sale.

474 Whether the same ingredients that would make a contract entire under § 1952 of the Code, or § 17 of 29 Car. II, C. 3, would be deemed sufficient in other cases, for instance, in a sale or purchase of real property, has been doubted, if not positively denied. Indeed, there does seem to be a distinction indicated in opinions of learned judges, or inferable from their language in more than one of the numerous cases which have arisen upon § 17 of the statute of frauds; yet the distinction is not so clearly apparent to my mind as I would desire it to be. Some of these cases will be referred to, or briefly stated and quoted.

And here it may be asked, whether, when Metcalf instructed Schley to sell lot one, he directed him to dispose of lot three also? When Sch*ely* sold one and two to Garsed, did he sell him lot three at the same time; and, if so, were all three embraced in one transaction, and blended into one contract? In other words, if the three lots were sold to Garsed, was it the intention and understanding of the parties that the sale and purchase of each lot was to depend upon the others absolutely?

475 Although a seperate price may have been agreed upon for each lot, bale, or pound of the cottons, yet if any of these stipulations or other matters of like character entered as essential elements into the sale, and the contract would otherwise have been indivisible, none of these would unsettle its entirety.

It may not be premature to suggest an inquiry which possibly may yet arise in this case. The court, however, will not anticipate any opinion whatever upon the subject. The question to which I allude is of the following nature, namely, where a contract is entire when entered into, whether there may not be a severance of the entirety by the subsequent acts of the buyer himself, notwithstanding there may have been part performance by the seller, but who refuses to perform the remainder of the agreement.

A divisible or severable contract is distinguishable from one that is indivisible or entire. The former presents itself where the amount of consideration to be paid by one party depends upon the extent of the performance by the other.

476 What properties or ingredients are necessary to constitute the latter I have indicated. It may be remarked that it is always necessary, first, to determine whether a contract is entire before one that is severable—susceptible of apportionment—can properly arise; for the

question of divisibility always ad'resses itself to a contract which has already been ascertained not to be indivisible.

There is another kind of contract, (one of a class,) which may be adverted to, as it may possibly be of some assistance in elucidating this immediate subject—a subject which is involved in nice and difficult distinctions. It bears a close affinity to both entire and severable contracts; yet it admits of a sensible discrimination, although it partakes, if the expression may be allowed, of both entirety and divisibility, and arises where, for instance, a certain quantity or number of things are purchased together, and no fixed sum is agreed upon for the whole of the things or items; but the price is to be computed at so much the single acre, pound, or number, or where the price per acre, pound, or number is implied by law. Expositions of contracts of this char-
477 acter may be found in Johnson vs. Johnson, 3 Bos. & Pull., 162, and Robinson vs. Green, 3 Met., 159. Both of these were cases at law. Whether a court of chancery would have entertained a different view in either of them, has not been argued here, and, therefore, I shall advance no views on the matter further than to say that courts of justice cannot make contracts for parties, nor alter or vary those made by them. The performance must be exact, not cy pres.

Returning to the admissions and declarations of Metcalf, made to Freedman, Roth, Grosvenor, Jones, and Stinchcomb. In Boswell et als vs. Blackman, 12 Ga., 594, it was laid down in accordance with the well-settled rule by Nisbet, J., in giving the opinion of the court, that, "In all cases where the admissions of one party are sought to be given in evidence to bind the others, a joint interest must be first proven. Whether a partnership be proven in any given case of this kind is a preliminary question for the court."

That eminent magistrate, Chief-Justice Lumpkin, in delivering the judgement of the court, in Printup vs. Mitchell, 17 id., 558, said:
478 "To make the declarations evidence, they must be concomitant with the principal act, and so connected with it as to be regarded as the mere results and consequences of co-existing motives, in order to form a proper criterion for directing the judgement which is to be formed upon the whole conduct."

"And," said the supreme judicial court of Massachusetts, in Combs vs. Scott et al., 12 Allen, 493, "ignorance, mistake, or misapprehension of any of the essential circumstances relating to the particular transaction alleged to have been ratified, will absolve the principal from all liability by reason of any supposed adoption or assent of the previously unauthorized acts of the agent."

In ascertaining the effect of the admissions or declarations of Metcalf, it will not do to confine the enquiry to his conversations with, or admissions to, one particular witness; but all similar declarations made to the other witnesses must be considered. And, further, in order to make the ratification of an unauthorized act of an agent binding, it must be
479 made with full knowledge of the several facts affecting the rights of the principal. The confirmation or ratification must be of such acts as would charge the principal with an equitable or legal liability, if done by himself. It may not be unimportant to add, that if Schley sold the three lots of cotton to Garsed as an indivisible contract, and Metcalf was then, or subsequently became, cognizant the fact, he could not ratify the transaction as to lot one, or lots one and two, and repudiate it as to lot three. He must either adopt the whole or none. If it was a joint bargain and sale, single and entire, and it be established that Metcalf ratified the sale of lot one, it will operate as a confir-

mation of the sale of lot three also. But with the question of adoption and ratification, the equally important enquiry, the nature of the alleged contract must first be determined.

Whether a contract is entire depends, as already intimated, upon the intention of the parties, and this must be discovered in each case
480 by considering the language employed, or the acts done by the parties, and the subject-matter of the contract.

In Baldey vs. Parker, 2 B. & C., 37, (cited by counsel for Garsed,) there was a verbal sale of a number of articles at the same time, a separate price being fixed for each, and no one of them came to ten pounds sterling, but in gross exceeded that sum. The court adjudged this to be an entire contract, within the meaning and mischief of the 17th section of the statute of frauds. The point for decision was what species or kind of contract was referred to in this particular section. The judges delivered their opinions seriatim, but none of them gave a definition of an entire contract; nor does the report of the *the* case seem to uphold the idea that any of them intended to do so.

Elliott vs. Thomas, 3 M. & W., 176, (also relied on by Garsed.) This case arose upon the following facts: There was a joint order for common steel and for cast-steel. The first was delivered and accepted, but there was a dispute as to the last, and the question was whether
481 the receipt and acceptance of the former was sufficient to make the contract good for both the cast and common steel, and the court decided that it was a joint contract.

Scott vs. the Eastern Counties Railway Company, 12 id., 33.

An oral order was given for a number of lamps, of which one was a triangular lamp, not ready for delivery until nearly two years afterwards. In the mean time all the others were delivered and paid for; the triangular lamp was rejected and an action brought. It was objected that the acceptance of the other lamps two years earlier, and before the triangular lamp was in existence, was not a part performance of that lamp. But the court held the contract entire for all the lamps, and that the acceptance of those delivered made the contract valid for all, and thus satisfied, not only the 17th section of the statute of frauds, but the 9th Geo. IV, c. 14, s. 7, also. (See the code, sect. 1952.) Alderson, B., said:
"There is no distinction in this case and that of a party who goes
482 into a shop and buys fifty different articles at the same time. It is clear that such a person does not make fifty different contracts. If a man enters into an entire agreement for goods made, and for others to be made, his accepting part of the goods made is evidence of his having entered into the agreement. That is the true object and meaning of the statute."

Withers vs. Reynolds, 2 B. & Ad., 882. This case grew out of a written agreement: "J. R. undertakes to supply J. W. with wheat straw, delivered at his premises, till June 24, 1830, at the sum of 33s. per load of 36 trusses, to be delivered at the rate of three loads a fortnight; and the said J. W. agrees to pay to the said J. R. 33s. per load, for each load so delivered, from this day till the 24th June, 1830, according to terms of this agreement." The court held the contract not to be entire, as the seller had a right to demand payment toties quoties, on delivery of each load. S. P. Seymour vs. Davis, 2 Sanfd., 239; Davis vs. Maxwell, 12 Met. 286; Baker vs. Higgins, 21 N. Y., 395.

483 In Oxendale vs. Wetherell, 9 B. & C., 386, suit was brought to recover the price of 130 bushels of wheat, sold and delivered by the plaintiff to the defendant, at 8s. per bushel. Defendant contended that he had made an absolute agreement for 250 bushels, and that as

the plaintiff had failed to perform the whole contract, he was not entiled to recover anything. There was a verdict for the plaintiff, with liberty to the defendant to move to enter a non-suit. Upon argument in the court in banc, Lord Tenterden said: "If the rule contended for were to prevail, it would follow that if there had been a contract for 250 bushels of wheat, and two hundred and forty-nine had been delivered to and retained by the defendant, the vender could never recover for the 249, because he had not delivered the whole." Bayley and Parke, J. J., expressed themselves to the same effect. This case is denied to be law in New York. Champlain vs. Rowley, 13 Wend., 258; 18 id., 187; McKnight vs. Dunlop, 4 Barb., 36.

But in Bowker vs. Hoyt, 18 Pick., 555, Oxendale vs. Wetherel, was approved as founded on manifest justice. That case was thus:

484 Assumpsit, for 410 bushels of corn sold and delivered. Plaintiff proved the delivery, and price, 85 cents per bushel, amounting to $348.32. Defendants insisted that they had bought 1,000 bushels, and that the 410 delivered was part performance of the whole contract. Before suit brought, plaintiff made out a bill against defendants for 500 bushels at 85 cts. and presented it. Afterwards a dispute arose in regard to the contract. Plaintiffs contending that it was for 500 bushels only, and defendants that it was for 1,000, and claimed the residue, and told plaintiff if he could not make up the 1,000 bushels, he would take no more. The plaintiff refused. The sale was a cash transaction; and defendants retained the corn delivered, without offering to return the same. The jury found that the contract was for 1,000 bushels. The case was taken to the supreme judicial court, where the verdict was set aside, and a new trial granted. The court said:

"The defendants accepted the 410 bushels of corn, and promised to settle the account therefor; and if there had been no such promise,

485 the acceptance of the corn was a severance of the entirety of the contract, and the defendants were bound to pay for the corn delivered; for the *case* finds that it was to be a cash transaction. From this liability the defendants could not be released by the failure of the plaintiffs afterwards to deliver the rest of the corn, without returning to him the corn delivered."

The following position was advanced and argued for the Bealls:

"If Schley's contract was personal, it is entire; if as agent for different owners of separate lots of cotton, the contract is several as to the different owners, and the several obligations have no connection whatever. Part performance or a whole performance of one man's contract is no part performance of another man's contract. The idea is simply absurd."

But I find that the supreme court of New Jersey, (A. D. 1850,) in Field & Field vs. Runk, 2 Zabr., 525, entertained a different view from that assumed by counsel for the Bealls on the question of agency.

486 The case was this: G. F. & R. F., each owning a seperate part of a certain quantity of corn, commenced together negotiating with R. for the sale of the whole of the corn, but the parties seperated without making the contract. A few days afterwards, G. F. completed the bargain for the sale of all the corn, which sale R. F., by subsequent admissions to third persons, recognized and ratified. A part of the corn was delivered to R., who paid for it. The residue not being delivered, he brought suit against G. F. and R. F. The court held the contract to be entire; and that where several persons, each being the owner of a distinct part of the goods, make a joint sale by parol, or, in other words, where one sells the property of both, each owning a seperate portion, as a joint contract, and the other ratifies the act, and one delivers a part

of his parcel, and it is accepted and received by the buyer, this is a part delivery so as to satisfy the statute of frauds. There was no note or memorandum in writing, no earnest given to bind the bargain, 487 or part payment of the price; but a portion of the corn was delivered to and accepted by R.; G. F. made the verbal sale, as for himself and as agent for R. F.; and the latter afterwards adopted the act of the former. There seems to be a discrepancy in the report as to whether the delivery was made by G. F. or R. F.; but by which delivered is of no legal consequence.

In Hunt vs. Mills, 17 Wend., 333, five parcels of goods were seperately struck off to Hunt by Mills, at auction. Four were delivered to Hunt, the fifth was not. He then tendered a note, in accordance with the terms of the sale, for the whole amount, which being declined, he brought suit for the breach, the non-delivery of the fifth parcel. The court held that the part-delivery of the goods took the case out of the statute of frauds, and Chief-Justice Nelson (now the senior associate justice of the Supreme Court of the United States) said, inter alia, "There is no sensible or legal distinction in this respect between a public and a private 488 sale, and the same rules of construction should be applied to both. * * * * * Where the purchase is made at one time, and from the same individual, however numerous the articles may be, the whole transaction should be deemed as constituting one entire contract, and the prices of the different articles fixed upon as but part and parcel of it."

This case was taken to the court of errors, and there affirmed; 20 id., 431. The chancellor, after restating the same principle laid down by the supreme court as to the entirety of the contract, adds: "The case would be different where the purchaser, either at a public or private sale, paid for and took a delivery of some of the separate articles only, leaving the residue wholly unpaid for, or where several articles were purchased at the same time to be paid for on delivery, and the purchaser afterwards received and paid for some of the separate articles only." And cites Morton's Law of Vend., 59.

Shurtleff vs. Willard, 19 Peck, 202. Here the court, after stating the long unquestioned rule, that where numerous articles are included in one sale, the delivery and acceptance of part for the whole 489 withdraws the case from the statute, held that it applied to goods scattered in different and distant places, and is not limited to the same parcel or mass of goods, as a cargo of a vessel, or the stock of goods in a particular store or place. Minor vs. Bradley, 22 id., 457; Clark vs. Baker, 5 Met., 452.

Shaw vs. Badger, 12 Scrof. & R., 275. This case came before the supreme court of Pennsylvania on a writ of error to the district court for the city and county of Philadelphia. Indebitatus assumpsit for goods sold and delivered, &c. Plaintiff proved by his agent that he had sold and delivered to defendant five head of cattle for 217 dollars; defendant paid part, and promised to pay the residue, 150 dollars. He also admitted 100 dollars to be still due, and that when the agent sold him the five head of cattle he also sold him thirty-eight sheep, selected out of a flock, at 4 dollars a head, and that the agent was to keep them a few days, but that he subsequently sold them with the remainder of the flock, without selection, at 4 dollars and 25 cents a head. He 490 claimed a deduction, by way of set-off from the demand, as he was injured by the breach of the seller in not delivering to him the sheep.

Duncan, J., speaking for the court, said: "If Shaw had refused to

proceed on the contract totally, on the ground that Badger had disposed of the sheep to others, and had been sued, no doubt this objection would have prevailed; for although they were seperate articles, and sold for seperate prices, it does not follow that the contract was not a gross one. The butcher might well say, I will not take the cattle without the sheep. * * * But by accepting the cattle, paying for them in part, and tendering payment for the whole, deducting his loss for the non-performance of the contract as to the delivery of the sheep, he has destroyed the presumption of joint contract." The court referred to Fisher vs. Samuda, 1 Campb., 190, as precisely in point, and remarked: "They decided that a party will not be obliged to accept of part, unless all are furnished on the terms agreed on; yet deciding that if he accept of any article, he is precluded from saying the contract was entire." The
490½ question of set-off was not passed upon by the court. (See Bragg *at* al vs. Cole, 6 Moore, 17 E. C. L. R., 19.

Jenner vs. Smith, 4 Law R. C. P., 270. This case was as follows: The plaintiff at a fair contracted orally to sell to defendant, at a given price per cwt., two pockets of hops, which hops were inspected and approved, and also two other pockets of which samples were shown, but which were lying in a warehouse in London. Defendant took away with him (and afterwards paid for) the first two pockets, but the last two were to be forwarded to him at a future time. Plaintiff went to the warehouse and selected two out of three pockets, which he had there, and directed the warehouse-keeper to mark them "to wait the buyer's order;" but no alteration was made in the keeper's books, and he continued to hold the plaintiff liable for the storage. The plaintiff, a few days afterwards, sent defendant an invoice describing the numbers, weight, and prices of the two pockets delivered at the fair, and also of the two that had been set apart at the warehouse, and enclosed a draft for acceptance. This was returned unaccepted, and defendant
491 refused to receive the last two pockets. The action was for goods bargained and sold.

The court held the contract to be indivisible; but that no recovery could be had in this form of action, because the property in the last two pockets had not passed.

Since this cause was submitted I have read the record more than once, and with mindful attention considered the evidence, but I have failed to arrive at a satisfactory conclusion on the aggrigated merits of the case. The most prominent and stubborn impediment in the way is, whether, if there was a sale of the three lots of cotton, it was a joint contract, containing those ingredients which are essential to entirety. It is not requisite at present to remark on matters which I deem subsidiary or subordinate to the main inquiry, or on those which may be legitimate sequences to it. I invite attention, however, to what has been said on the subject of indivisible and divisible contracts or sales; also, to the cases named by the court, and those it has stated and quoted, which have a general or particular bearing on this question,
492 and on others growing out of contracts for the sale of goods, and under section 17 of the 29 Car. 11., c. 3, and section 1952 of the code.

With the various questions already decided, the views expressed on some of the principles which govern, and the procedure—pleading, evidence, and practice—which prevails in courts of equity, and the construction placed upon certain portions of the code of this State, the court is satisfied. The court will hear argument on all or any of the questions not already adjudged by it.

During the discussion on the interpretation which the court ought to give the 17th section of the statute of frauds, (which, with some variations and slight additions, has been incorporated into the code,) it was remarked by one of the counsel for Garsed, that an English judge had once said: "Every line of it (the statute) is worth a subsidy." This was the observation of Lord Nottingham, who himself was the originator of this law, and brought the bill for enactment into the House of Lords.

In Marvin vs. Wallace, 6 El. & B., 726, Erle, J., said: "I believe the party who inserted the words, ('accept and actually receive,') had no idea what he meant by 'acceptance;'" and Lord Campbell re-
493 marked: "I must say that giving, as I do, full effect to the statute while it remains, I shall rejoice when it is gone. It promotes fraud rather than prevents it, and introduces distinctions which, I must confess, are not productive of justice."

Lord Chief-Justice Cockburn, in Castle vs. Sworder, 6 H. and N., 832, (ex. ch.,) said: "I think these terms (accept and actually receive) are equivalent." Yet, to the common understanding, these terms, as used in that section, and in the 1952d of the code, clearly mean distinct things, each word being essential to impart the intention of the legislature. Instances suggest themselves to the legal mind wherein "acceptance" might precede, as well as be cotemporaneous with or follow "receipt."

Chancellor Kent, in speaking of what is requisite under the 17th section to pass the title to goods, or to take the case out of the operation of the statute, is amply justified in saying that "it is difficult to select those leading principles which are sufficient to carry us safely through the labyrinth of cases that overwhelm and oppress this branch of the law." 2 Comm., 509.

494 It was said at Westminster Hall, a century after the passage of this law, that it had not been explained at a less cost than one hundred thousand pounds sterling; and Chancellor Kent, when writing his Commentaries, forty years ago, thought the sum might then be put down at a million. Who can compute the amount it has cost since that time? And still it is not yet "explained." Then how irksome, how vain the task a single judge is compelled by duty to attempt! He must, indeed, possess a commanding mind, who, at this day, would exclaim: Ossa areda, dabo vobis spiritum et vivetis!

As to what was said during the argument in reference to feigned issues may be laid out of view. These fictions do not, I think, prevail in technical form in our country, at least not in the national courts, and they have been abolished in England. The course of proceeding on the trial of issues out of chancery is generally the same as that adopted in ordinary trials at law, except where the court im-
495 poses restrictions on the parties.

This cause having been heard upon the pleadings, the evidence of the parties themselves, taken and read at the instance of and by the consent of the respective parties to the suit, and on the depositions and other testimony of witnesses, it is now ordered by the court that the following issues be tried by a jury at the next term, and upon the trial of the issues the bill, answers, the answer in the nature of a cross-bill, exhibits, depositions of the witnesses, and the testimony of the parties and of the witnesses taken before Mr. Commissioner Carr, shall be read in evidence. No witnesses not heretofore examined are to be introduced on the trial, unless the party or parties producing such witnesses shall, at least sixty days before the first day of the next term, give notice, in writing, to the opposite party or parties, or to the solici-

tor or counsel of the same, of his or their intention to produce such witnesses, or to take their depositions, with their names and usual place of abode or residence, with such particularity as will enable him
496 or them to find out the witnesses and ascertain their character. But this regulation as to new witnesses shall not extend to the parties to the record, or to witnesses who have heretofore testified in the case. Commissions to take testimony are to be sued out and executed in conformity to law and the practice of the court.

The respective parties, and all witnesses, may give their testimony viva voce in open court and before the jury.

It is further ordered that, on the trial of the issues which involve the 8,678 bales of cotton, part of lot three, John Garsed shall be plaintiff, as in an action at law, and Jeremiah Beall and William A. Beall, surviving partners of Metcalf, deceased, shall be defendants. And where the 1,100 bales, the residue of lot three, are involved, John Garsed shall, in like manner, be plaintiff, and William A. Beall, surviving partner of Metcalf, defendant.

Incongruity may seem to attend this twofold arrangement, but, under the peculiar facts of the case before the court, and where issues
497 are to be tried substantially in accordance with the custom of the common law, this disposition, as a preparatory measure, could not well be avoided. Nevertheless, the court will, during the progress of the trial by issue, and before the jury retire to consider of their verdict, endeavor to adjust and regulate the apparent inconsistency and permixtion of distinct subject-matters and different parties.

1. Whether there was a sale of lots, one, two and three, by Schley to Garsed; and, if so, whether this contract of sale was intended by the parties to be one entire and indivisible transaction.

2. If the contract was entire, whether it was, or was not, confirmed and ratified by Metcalf.

3. Whether lot three was sold at a stipulated price per pound, or at the market-price, or how otherwise sold, and what was a reasonable price, or the market-price at the date of the sale, at the places respectively where the cotton then was.

4. Whether, if no fixed time was agreed upon for the delivery of the cotton, what was a reasonable time at which it ought to have been delivered.

5. Whether, if the cotton was to be weighed, or otherwise prepared for the purpose of putting it in a deliverable state, was the buyer
498 or seller to perform these acts.

6. What was the weight per bale of the 8,678 bales, and also of the 1,100 bales? Lot 3 was at the following places:

1,406 bales at Eufaula, Alabama.
1,195 bales at Dawson, Georgia.
2,556 bales at H. I. Cook's warehouse, Albany, Georgia.
3,522 bales at Simms & Rusk's warehouse, Albany, Georgia.
1,100 bales at Rice's warehouse, Albany, Georgia.

9,778.

7. What was the market-price, or a reasonable price, per pound for the cotton at the time it ought to have been delivered?

There will also be an issue quantum damnificatus.

499 And afterwards, to wit, on the fifteenth day of December, A. D. eighteen hundred and seventy-one, at a stated term of said

(Endorsed:) In the fifth circuit court of the United States for the southern district of Georgia. John Garsed vs. Wm. A. Beall and Jeremiah Beall, s'ors., &c., and John Garsed vs. William A. Beall, s'or. Issues at law and the verdicts of the jury thereon. Filed the 15 day of Dec'r, 1871. Jas. McPherson, clerk.

504 *Final decree.*

In the fifth circuit court of the United States for the southern district of Georgia. In equity.

WILLIAM A. BEALL, AND JEREMIAH BEALL, *vs.* THOMAS S. METCALF, JOHN GARSED, AND George Schley. } Removed from a State court under the acts of Congress of July 27th, 1866, and March 2, 1867.

The above cause came on to be heard on the pleadings and evidence and on the verdicts of the jury rendered on the issues sent down to be tried at law, and which were returned to this court, and, being heard on said pleading, evidence, and verdicts, it is therefore considered and decreed by the court that the case be dismissed, including the cross-bill, and that William A. Beall and Jeremiah Beall, surviving partners of Metcalf, recover of John Garsed the costs in this behalf expended, and that the clerk tax the cost against the said John Garsed.

In open court, December 16, 1871.

W. B. WOODS, *Judge.*
JOHN ERSKINE, *Judge.*

(Endorsed:) U. S. cir. court, so. dist. of Ga. In equity. W. A. Beall and Jeremiah Beall, complts., and T. S. Metcalf, John Garsed, & George Schley, defendants. Final decree. Filed December 16, 1871. Jas. McPherson, clerk.

505 *Order allowing appeal to Supreme Court of U. S.*

In equity, in the fifth circuit court of the United States for the southern district of the State of Georgia.

JOHN GARSED, COMPLAINANT, *vs.* JEREMIAH BEALL AND AMOS BEALL, survivors of the copartnership of Jeremiah Beall & Amos Beall & Thomas Metcalf, and against said Amos Beall as surviving partner of the firm of Thomas Metcalf & Wm. A. Bell.

At November term, 1871, decree for defendants, and bill dismissed.

Now, on this the 16th day of December, in the year of our Lord 1871, the complainant (in open court) prays that he [be] allowed an appeal to the Supreme Court of the United States upon all the matters decided by said decree; which prayer is hereby allowed and ordered to be entered upon the order-book.

W. B. WOODS, *Judge.*

DEC'R 16, 1871.

(Endorsed:) U. S. circ't court, so. dist. of Ga. John Garsed, complt., and Jeremiah Beall and Amos Beall, s'ors of copartnership of Jeremiah Beall and Amos Beall and Thomas Metcalf, and against said Amos Beall as surviving partner of the firm of Thomas Metcalf and William A. Beall. Order allowing appeal to Supreme Court of U. S. Filed Dec'r 16, 1871. Jas. McPherson, clerk.

506 *Petition of John Garsed for appeal.*

JOHN GARSED
vs.
WILLIAM AMOS BEALL, JEREMIAH BEALL, & Thomas S. Metcalf.

In equity, for the fifth circuit court for the southern district of Georgia.

To the honorable the Supreme Court of the United States:

The appeal of John Garsed the above-named complainant and appellant, respectfully sheweth, that, on the eighth of September, 1865, the above-named defendants, William Beall & Jeremiah Beall, filed their bill in the superior court of Richmond County, in said State of Georgia, against the appellant and said Thomas S. Metcalf & one George Schley, alleging that under a military order of the United States military commander of the "Department of Georgia," this appellant and said Schley were seizing certain large quantities of cotton of one million of dollars or more in value, which they alleged was the joint property of themselves and said Metcalf, each partner owning one-third.

Their bill further alleged that said order was issued at the instance of this appellant to compel a performance, on the part of said Metcalf, of an alleged contract made by him with this appellant, through said Schley, for the sale of said cotton; that while it was true that
507 Metcalf had sold two lots of cotton, through said Schley, to this appellant, yet they denied that he had sold the cotton in dispute to him, which they called in their bill lot No. 3. They also alleged that Metcalf had been so intimidated by the military authorities then dominant in Georgia that he declined to become a party to their bill, and hence they made him party defendant. The bill prayed an injunction against this appellant & Schley, to restrain them from taking possession of the cotton. The injunction was granted on the 16th of September, 1865, and immediately served, and about the same time the military order for the enforcement of the contract was countermanded, which left the said Bealls & Metcalf in possession of the cotton.

To the above-mentioned bill this appellant filed his answer in the nature of a cross-bill, as by the law of said State he was entitled to do, in which he alleged that he had made but one contract with Schley as the agent of Metcalf for the purchase of cotton, which included the cotton in dispute, and r'lied upon certain writings, copies of which he attached to his answer as exhibits, as evidence of the contract, and sufficient to take the case out of the statute of frauds, and also upon what he alleged to be part performance of the contract on his part in negotiating for the loan of so large a sum of money as was necessary to purchase such an amount of cotton, and in forwarding said money
508 from Philadelphia to Augusta, Georgia, at heavy expense. He admitted that when Metcalf refused to carry out the contract he did apply to the military commander to have said contract enforced, inasmuch as there was at that time no organized court, either State or Federal, to which he could apply, and that the order was thus procured.

And he prayed that the complainants might be decreed to specifically perform the contract, inasmuch as a court of law could not award damages adequate to the injury sustained by non-performance of the contract; and that if anything should occur before the final decree, to place it out of the power of the complainants and Metcalf to perform the contract specifically, that then the court would award such damages to him as might deem reasonable and just.

This answer was sworn to Oct. 11th, 1865. Schley also answered the bill, corroborating Garsed's answer. Having obtained an injunction, a countermand of the military order, and possession of the cotton, complainants dismissed their bill (subsequent to the filing of the answer of this appellant in the nature of a cross-bill) without the knowledge of this appellant; upon ascertaining which this appellant moved to reinstate the case, which motion, after argument, prevailed, but the chancellor ordered that thenceforth this appellant should occupy the position of complainant, and the Bealls and Metcalf that of defendants, Schley being dropped out of the controversy. Thus the case stood when
509 it was removed by this appellant to the circuit court of the United States under the acts of 1866 & 1867, where a decree was had at the November term, 1871, dismissing the cause, including this appellant's cross-bill, and that the Bealls, as surviving copartners of Metcalf, recover costs.

Wherefore, inasmuch as the amount involved exceeds two thousand dollars, this appellant, within the period allowed by law, appeals from the whole of said decree of said circuit court of the United States, and prays that the decree of said circuit court, and the bill, answers, pleadings, depositions, evidence, and proceedings in said cause, may be sent to the Supreme Court of the United States, and that said Supreme Court will proceed to hear the said cause anew, and that said decree of the circuit court *court*, and every part thereof, may be reversed, and a decree made such as to the said Supreme Court may seem proper The decree herein sought to be reversed was rendered Dec. 16th, 1871.

Dated 25 Oct., 1873.

A. H. STEPHENS,
R. TOOMBS,
Solicitors for Appellant.

John Garsed hereby makes application to the honorable William B. Woods, the United States circuit judge who presided in the cause, to have the appeal sought in the foregoing petition allowed, and tenders the accompanying bond, signed by Robert Patterson, R. Garsed, and Robert E. Patterson, as his security for the payment of costs,
510 which he prays may be approved, and that the usual citation may be signed by the judge.

A. H. STEPHENS,
R. TOOMBS,
Solicitors for Garsed.

The appeal sought in the foregoing petition (the amount exceeding two thousand dollars) is hereby allowed, the bond approved, and citation signed as prayed for. The clerk is ordered to perform such other acts as are by law required to carry said cause appeal before the Supreme Court of the United States.

W. B. WOODS,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. William A. Beall & Jeremiah Beall, compts., vs. John Garsed et al.,

defendants. Petition of John Garsed for appeal. Order of the judge allowing same. Filed Nov. 14, 1873. Jas. McPherson, clerk. Stephens, Toombs, sols. for appellant.

Citation.

By the Honorable William B. Woods, one of the judges of the circuit court of the United States for the southern district of Georgia.

To William Amos Beall and Jeremiah Beall, as surviving copartners of William A. Beall, Jeremiah Beall, and Thomas S. Metcalf:

511 Whereas John Garsed has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of Georgia, made in your favor, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the city of Washington, on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, in the fifth judicial circuit, the thirty-first day of October, in the year of our Lord one thousand eight hundred and seventy-three.

W. B. WOODS,
U. S. Circuit Judge.

Acknowledgement of service.

I acknowledge service of this citation, admit notice, and waive copy. October 31st, 1873.

BENJ. HILL,
Atty. for J. & W. A. Beall.

(Endorsed:) U. S. cir. court, so. dist. of Georgia. In equity. John Garsed, appellant, vs. William A. Beall & Jeremiah Beall, appellees. Citation & service. Filed Nov. 14, 1873. Jas. McPherson, clerk. Stephens, Toombs, sols. for appellant.

512 *Appellant's bond to appellee*, $100.00.

Supreme Court of the United States.

JOHN GARSED
vs.
WILLIAM AMOS BEALL, JEREMIAH BEALL, & Thomas S. Metcalf.

In equity, in the fifth circuit court of the United States for the southern district of Georgia.

Know all men by these presents that we, Robert Patterson, Richard Garsed, and Robert E. Patterson, all of the city and county of Philadelphia, and State of Pennsylvania, are held and firmly bound unto William Amos Beall and Jeremiah Beall, as surviving partners of Thomas S. Metcalf, all of the State of Georgia, in the sum of one thousand dollars, to be paid to the said William Amos Beall and Jeremiah Beall, or the survivor of them, his executors and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us,

jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this thirteenth day of October, 1873.

Whereas John Garsed hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-
513 entitled action by the said circuit court of the United States for the southern district of Georgia:

Now, therefore, the condition of this obligation is such that if the above-named Garsed shall prosecute his appeal to effect and answer all costs, if he fail to make his plea good, then this obligation shall be void; otherwise to remain in full force.

R. PATTERSON. [L. S.]
R. GARSED. [L. S.]
ROBT. E. PATTERSON. [L. S.]

Sealed and delivered in presence of—
WM. M. GREINER.
R. B. STEEL.

Approved by—

W. B. WOODS,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. John Garsed, appellant, vs. William A. Beall and Jeremiah Beall, appellees. Appellant's bond to appellees, $1,000.00. Filed Nov. 14, 1873. Jas. McPherson, clerk. Stephens, Toombs, sols. for appellants.

516* *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

I, James McPherson, clerk of the circuit court United States of America for the fifth circuit and southern district of Georgia, do hereby certify that I have compared the writings annexed to this certificate, and that they are true copies of their respective originals, now on file and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of William A. Beall and Jeremiah Beall, complainants, and John Garsed et al., defendants, as of file in said court.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Savannah, in said district of Georgia, this 16th day of January, A. D. 1874, and of the Independence of the United States the ninety-eighth.

[SEAL.] JAS. McPHERSON, *Clerk.*

(Indorsement on cover:) No. 136. John Garsed, appellant, vs. William A. Beall and Jeremiah Beall, as surviving copartners of Wm. A. Beall, Jeremiah Beall, & Thomas S. Metcalf. S. Georgia, C. C. U. S. Filed 22 January, 1874.

*Folios 514 and 515 missing.

IN THE

Supreme Court of the United States.

No. 136.—October Term, 1875.

JOHN GARSED, Appellant,

vs.

WILLIAM A. BEALL, as Surviving Copartner of William A. Beall, Jeremiah Beall, and Thomas Metcalf.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

Brief of Points and Authorities,

By ALEX. H. STEPHENS, for Appellant.

Jno. L. Pickrell, Printer, 4½ and D streets, Washington, D. C.

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vs.

WILLIAM A. BEALL and JEREMIAH BEALL, as surviving copartners of William A. Beall, Jeremiah Beall and Thomas S. Metcalf.

No. 136.

ASSIGNMENT OF ERRORS.

The court below erred:

1. In dismissing the case, including the cross-bill of the appellant, John Garsed.

2. In holding that there was no valid contract for the sale of 9778 bales of cotton in controversy in this case to the appellant, John Garsed.

3. In holding that section 2182 of the code of Georgia required that the authority of the agent, George Schley, should be in writing, and that therefore he was not lawfully empowered to make a promise or agreement in writing for the sale of the 9778 bales of cotton here in controversy.

4. In holding that the contract of the sale of the three lots of cotton which are referred to in the writings signed by George Schley in evidence in this case was not an entire contract.

5. In holding that the statement of George Schley before the military court was not admissible to prove the authority received from Metcalf to sell the cotton in controversy.

6. In not entering a decree in favor of John Garsed, in accordance with the prayer in his answer or cross-bill in this case.

ROBERT TOOMBS,
J. HUBLEY ASHTON,
Of Counsel for Appellant.

IN THE

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By ALEX. H. STEPHENS, for Appellant.

Statement of the Case.

William A. Beall and Jeremiah Beall, on the 18th day of September, A. D. 1865, filed their bill in equity in the Superior Court of Richmond county, State of Georgia, alleging, among other things, that John Garsed, of Philadelphia, and State of Pennsylvania, by collusion with George Schley and by intimidation of Thomas S. Metcalf, both of Richmond county, Georgia, was seeking to seize and remove under military orders, secured under a false pretense of a contract of purchase, nine thousand seven hundred and seventy-eight bales of cotton (9,778) in the possession of Jeremiah Beall, but jointly owned by said Thomas Metcalf, Jeremiah Beall, and William A. Beall. The bill prayed that this forcible seizure and removal be enjoined, and for other and general relief. The injunction was granted and returnable to the April Term of said court, in A. D. 1866. The defendants an-

swered the bill separately. The answers of Garsed and Schley were filed in October, A. D. 1865, and that of Metcalf in the month of April following. Annexed to Schley's answer was the copy of a release executed by him in favor of the other parties to the cause, surrendering to them all of his interest in the case. Garsed answered that he had purchased the cotton from defendant Schley, who, he alleged, was the agent of Metcalf and the Bealls to make the sale. He charged a breach of the contract of sale on the part of plaintiffs and Metcalf by failure to deliver, refusal to accept payment, and prayed for a specific performance or compensation in damages. In April he filed an additional answer, concluding it with a prayer for such decree in the premises as he had prayed for previously, and that the same should stand as a cross-bill.

In this state of the pleadings the plaintiffs' solicitors, on the 24th September following, filed in the clerk's office the following paper, stating the case and proceeding as follows:

"The attempt to seize and remove the cotton under military orders by the defendants, as set forth in the above bill, having been abandoned, the complainants do hereby dismiss the bill. September the 24th, A. D. 1866. Benj. H. Hill, solicitor for complainants."

This was done in vacation. At the succeeding term of the court, October, A. D. 1866, counsel for Garsed moved to set aside this entry of dismissal, which the court overruled.

At the same time the same counsel moved that the bill, with all the parties now in the case, be retained, and proceed for the purpose of adjudicating the relief sought against the complainants and Metcalf. The court denied this order, but in lieu of it passed an order directing, "because the bill had been dismissed in vacation, whilst the answer of Garsed set up an equitable claim for relief, the proper subject-matter of a cross-bill, against Metcalf and

the complainants, which claim under the code of Georgia entitled him to a hearing and trial, therefore the said complainants and Metcalf be retained in court as parties to give Garsed the relief to which he might be entitled under the alleged contract. That Garsed be held as complainant and Metcalf and the Bealls as defendants, and that the cause thus stand in court." After these proceedings, and after some testimony had been taken on the part of Garsed by commission, Garsed, as a citizen of Pennsylvania, all the other parties being citizens of Georgia, procured at the April Term, A. D. 1867, an order removing the case to the Circuit Court of the United States. A certified copy of the record was filed in said court the 15th day of April, A. D. 1867, and the cause was thus transferred to that court.

Garsed claimed in his answer that nine thousand seven hundred and seventy-eight bales of cotton (9,778) was sold to him by George Schley as agent of Metcalf and the Bealls. Said sale was valid under the following state of facts: That on the 28th June, A. D. 1866, George Schley, a citizen of Augusta, Georgia, made a proposition in writing to sell the appellant six hundred bales of his own cotton, and as agent for Thomas S. Metcalf, two thousand and eighty-nine bales of cotton, and as agent of Thomas S. Metcalf and William A. Beall and Jeremiah Beall, eight thousand seven hundred and seventy-eight bales, as the agent of said Thomas S. Metcalf and William A. Beall, eleven hundred bales of cotton, which proposition is fully and completely set forth in the following exhibits, to wit:

D. D.

AUGUSTA, *June 28th*, 1865.

Mr. JOHN GARSED:

My Dear Sir:

No. 1. I control 2,089 bales of selected cotton, which you saw this morning at my gin-house, which I agree to

sell you delivered where it is, but reweighed, at twenty-five cents per pound in greenbacks, payable in Augusta. You have the privilege by the 6th of July to close the trade by telegraph, and will, in that event, wait for the money until you can reach here with it.

No. 2. I have 600 bales of my own, of the same lot, which you can have for eighteen cents in gold, payable here as soon as you can return with it.

No. 3. I also control, and will have authority to sell by the 3d of July, 9,778 bales of cotton, stored as follows: 1,406 bales at Eufaula, Alabama; 1,194 bales at Dawson, Georgia; 2,556 bales at H. C. Cook's warehouse, Albany, Georgia; 3,522 bales at Sims & Rusk's warehouse, Albany, Georgia; 1,100 bales at Price's warehouse, Americus, Georgia—9,778 bales; which cotton I will sell, delivered where stored, at twenty-three cents per pound, the cotton to be reweighed and payable in greenbacks. This purchase secured after I telegraph you.

Very respectfully yours, &c.,

(Signed) GEORGE SCHLEY.

Freight and drayage will be about $5 per bale to Savannah, insurance one per cent.

D.

Believed to be in very good order as a whole lot, and to average 500 pounds to the bale. They belong to, and were bought by, a large planter in the southwest Georgia, and can this day be bought for 20 cents in greenbacks. They are mostly crop-lots entire, and, therefore, are desirable for spinners, as cottons in that section are long staple. There is but very little doubt but that they can be had at that price a short time hence, if a buyer should come out with cash and go down and see him and the cotton.

E.

DEAR GARSED: Since you left town I saw the party controlling the large lot of cotton, No. 3, and it is agreed that if you telegraph to take it they will ratify what I have agreed, so this makes it unnecessary for me to telegraph Monday. Write and send by Glasgow how I shall

telegraph you, to whose care, or how, should it be necessary at any time. I wish you God speed in your journey. Too dark to see how to write more.

Truly, your friend,

(Signed) GEORGE SCHLEY.

28*th June*, 8 o'clock.

C.

PHILADELPHIA, *July 6th*, 1865.

To GEORGE SCHLEY, Augusta, Ga.:

I accept one (1), two (2), and three (3) lots in gold and greenbacks. Will be sent by next vessel by Adams Express. Send forward the cotton. I will return by steamer on Wednesday next.

(Signed) JOHN GARSED.

F.

AUGUSTA, *July 8th*, 1865.

To JOHN GARSED, No. 109 Chestnut street, Philadelphia:

Parties owning the nine thousand bale lot refuse to sell unless funds here. If here to-day bargain could be closed, and probably can be on your arrival.

(Signed) GEORGE SCHLEY.

A demurrer was filed and overruled and defendants ordered to answer, and answered as follows:

That there was no such contract as that set up by Garsed's answer, made by them or either of them.

2d. That said Schley had no authority, as their agent or broker, or as agent or broker of either of them, to make a contract, and if he made a contract at all with Garsed he made it as his own contract, and for his own benefit, and in his own name.

3d. That no memorandum of a contract was ever reduced to writing and signed by the parties to be charged, or by either of them, nor by any one as agent for them, or either of them; and that neither the said Schley, or

other person, had authority in writing, signed by the parties, or either of them, to make said contract as agent, broker, or otherwise; and various other defences, which appear in the record.

The cause was duly heard, tried, and a verdict and decree had for defendants. The complainants appealed, and the case came before this court on the appeal.

We are first met with a plea to the—

JURISDICTION.

This objection is two-fold:

1st. That courts of chancery have no jurisdiction to decree a specific performance of a contract for the sale of chattels.

2dly. That a court of chancery cannot decree damages for a breach of contract for the sale of chattels.

We answer that it is competent for chancery courts to do either on a proper case made.

These questions are fully reviewed and decided by his honor Judge Erskine, in the opinion delivered in this case, and contained in the record.

This court, in the case of the Merchants' Bank of Alexandria vs. Seaton, 1st Peters, 220 (Mr. Justice Thompson delivering the opinion), said:

"But notwithstanding this distinction between personal contracts for goods and contracts for lands is to be found laid down in the books as a general rule, yet there are many cases to be found where specific performance of contracts relating to personalty have been enforced in chancery, and courts will only weigh with greater nicety contracts of this description than such as relate to land."

The same principle was affirmed in Taylor vs. The Merchants' Insurance Co., 9th How., 398, 405. In Andrews vs. Brown, 3 Cush., 130, the court say:

"Where the party has the power to fulfill a contract when the suit was instituted, and from any cause becomes

unable to do so during the pendency of the suit, the court having had jurisdiction at first can give compensation by way of damages."

2 Story Eq. Jurisprudence, 710–719.

Code of Georgia, section 3188, settles the question as follows, to wit:

"Any good reason in equity and good conscience why the complainant should have the possession of specific personalty to which he has title, will sustain a bill for specific performance or delivery; and, unless rebutted by other equitable reasons, will justify a decree. The jury, in such cases, may decree either damages or specific delivery."

This objection being answered, there is nothing in the way of the main question and the merits of the case.

Statute of Frauds.

The proposition of George Schley, dated 28th June, 1865, to sell the appellant the 9,778 bales of cotton in controversy, was a valid contract under 17th section, 29th Charles 2d, chapter 3, commonly known as the statute of frauds, and binding upon appellees; all the terms of the contract being embraced in the written memorandum signed by George Schley.

1st. Because it was accepted by John Garsed on the 6th July, A. D. 1865, according to the terms of the written contract. But it is objected that the offer was withdrawn by Schley on the 1st of July. We reply that the telegram of Schley was not received until after the acceptance on the sixth of July. This point is well-settled by the evidence (see Garsed's answer, page 19, record, and deposition, page 98, record) and closed by the decision of this court in Tayloe vs. Merchants' Fire Insurance Company, 9th Howard, page 395 to 413; but if it

was ever doubtful, it was made law in Georgia by sections 2,727 and 2,728 of her code, to wit:

(2727.) "The consent of the parties being essential to a contract, until each has assented to all the terms the contract is incomplete; until assented to, each party may withdraw his bid or proposition, unless a given time is agreed on in which the other party may assent.

(2728.) "If the proposition is made by letter, the acceptance by written reply takes effect from the time it is sent, and not from the time it is received; hence, the proposer cannot withdraw in the meantime. If the latter contains alternative propositions, the party receiving may elect."

2dly. Because it was ratified by Thomas Metcalf after the acceptance of Garsed.—(See Schley's and Metcalf's answer to original bill of the Bealls, pages 30, 43 of the record; also, the deposition of Charles H. Grosvener, page 79 of the record; W. C. Jones, page 111 of the record; James W. Stinchcomb, page 111 of the record; Col. M. Friedman, page 132 of the record; certificate of Lt.-Col. Watterman, page 132 of the record.) All this testimony is uncontradicted, except by Metcalf.

3d. Because a large part of the goods sold, to wit, 2,689 bales of the cotton, were contained in Schley's contract, were delivered to Garsed by Schley and Metcalf, and accepted, received, and paid for by him to said parties. This fact is conclusively proven and admitted in the record.

To my first point the Bealls reply that Schley was not their agent. To this we answer that it is true that Schley's memorandum shows that the cotton sold under that contract belonged to different parties.

He sold No. 2, 600 bales, as his own goods; he sold lots one and three expressly as the agent of other parties. He did not disclose his principals, which is not necessary to fix appellees' liabilities. See Code of Georgia, section 2197, to wit:

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(2197.) "If an agent fails to disclose his principal, yet when discovered the person dealing with the agent may go directly upon the principal under the contract, unless the principal shall have previously accounted and settled with the agent."

This is but the adoption of a universal rule which needs no authority to support it.

The record shows that lot N. 1 belonged to Metcalf alone. Of lot No. 3 Metcalf and Wm. A. Beall owned eleven hundred (1100) bales jointly, and Metcalf, Wm. A. Beall, and Jeremiah Beall owned the balance, 8,678 bales, in unequal shares.

The record admits that Metcalf and the Bealls were joint owners of the property, as herein stated, and jointly interested in the profits; that they entered into a verbal agreement to buy and sell cotton.

Thus a partnership contract was created according to law, with all of its legal incidents and responsibilities.

It was lawfully created by verbal agreement, and without any agreement, written or verbally, formal or informal, copartnership legally resulted from a joint ownership, use, and enjoyment of the profits of undivided property, real or personal. See Code of Georgia, sections 1887 and 1890, to wit:

(1887.) "A partnership may be created either by written or parol contract, or it may arise from a joint ownership, use, and enjoyment of the profits of undivided property, real or personal."

(1890.) "A joint interest in the partnership property, or a joint interest in the profits and losses of the business constitutes a partnership as to third persons. A common interest in profits alone does not."

All the partners are bound by the acts of one, within the legitimate business of the partnership.

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tions be proven prior to their action. See Code of Georgia, section 1908, to wit:

(1908.) "Third persons are bound by no stipulations among the partners themselves, unless actual notice of such stipulation be proven prior to their action."

These are also well-settled principles of the common law of England.

We have already shown that Metcalf, one of the partners, expressly authorized Schley, the agent, to sell the cotton in controversy. Schley's testimony proves it. His statement to the military court proves it, and he being dead, his sayings are competent testimony. See Code of Georgia, section 2206, to wit:

"The agent is a competent witness either for or against the principal. His interest goes to his credit. The declarations of the agent as to the business transacted by him are not admissible against his principal, unless they were a part of the negotiation and constituting the *res gestæ*, or else the agent be dead."

And Schley is abundantly supported by Grosvener, Roth, Jones, Stinchcomb, and others, and by the admissions of Metcalf and Wm. A. Beall in their answers; by the telegrams of the 1st and 8th July, A. D. 1865; they did not deny the agency, but only disavowed the authority to sell on the terms agreed upon by Schley.

And even if Schley acted without authority, the ratification of his act, both by words and conduct, is abundantly shown by the answers of Schley and William A. Beall, and the original bill of the Bealls before referred to, and the depositions of the witnesses just enumerated.

To the objection that the cottons in controversy belonged to different persons, and that the delivery of the cottons of one person was not a good delivery as to others, we reply that it was an entire sale, and rely upon 50th Georgia, 644, Grooves, Stubbs & Co. vs. Warfield & Wayne.

It is also objected that section 2182 of the Code of Georgia requires that the authority of the agent, Schley, should have been in writing. This objection was sustained by the court below, and is extremely important to the appellant. The section is in the following language, to wit, section 2182:

"The act creating the agency must be executed with the same formality (and need have no more) as the law prescribes for the execution of the act for which the agency is created. A corporation may create an agent in its usual mode of transacting business, and without its corporate seal."

It is to be found in part II, title III, chapter 5, article 1, of the code. That article contains fifteen sections, of which this is the fifth. That chapter contains four articles on the same subject, and all of them, with but slight variations, are but annunciation of common law principles. None, it is submitted, support in the slightest degree the construction claimed by the appellees, but, on the contrary, support the construction of the appellant.

1st. We reply that the words of the section confine its application solely to formal acts, that is, sealed instruments creating the agency. The word "formality," as applied to contracts, is a technical word, and in this connection is a synonym of "solemnity." It has a technical meaning. It is nowhere applied to simple or parol contracts, written or verbal. It would be strangely out of place in any such connection. It means a solemn written instrument under seal, and having this technical meaning. By a cardinal rule of common law it must be construed in that sense, unless there is something in the context to control this rule of construction. This common-law rule is expressly adopted by the code of Georgia in construing contracts. Section 2757, paragraph 2: "Words generally bear their usual and common signification, but *technical words*, or words of art, or used in a particular

trade or business, will be construed generally to be used in reference to this particular meaning." * * *

The latter clause of the section, excepting corporations from its operation, strongly supports our construction, the general rule of the common law being that corporations could only act under seal in the appointment of agents, it would be difficult to find a reason to confer upon them this special exemption from the general law of the land.

The use of the word "act" in the section is an additional aid in properly construing it. The first section of the same article is as follows: "Sec. 2178. The relation of principal and agent arises whenever one person expressly or by implication authorizes another to act for him, or subsequently ratifies the acts of another in his behalf." This section rests upon the general principle of both the civil and common law, that "the authority may be conferred by verbal delegations, by *informal writings*, and by implication, as well as by deeds."—(Story on Agency, section 47.) "The plain reason is that all which ought to be required in ordinary cases is the proof of the consent of the principal."—(Id.) So, also, "the nature and extent of the authority of an agent may be expressly given by a solemn and unsolemn instrument, or it may be implied or inferred from circumstances."—(Story Agency, section 45, et passim.) Code of Georgia, section 2191, same chapter, says: "A ratification may be express or implied from the acts or silence."

It will be observed that neither section 2178 nor 2192 require any of the agencies legalized under them to be in writing; neither formal or informal writings are necessary under them; therefore, it follows that the adoption of the construction of section 2182 of the code limits the authority of all such agents to the performance of such acts only as are not required by law to be evidenced by writing. They are compelled to assume against principal and authority that all writings are formal acts, abrogating the distinction between formal and informal, solemn and un-

solemn writings. This construction repeals, as to contracts, the statute of frauds, 29th Charles 2d, chapter 2d, which has been the law of Georgia since the settlement of the state; repeals sections 2717 and 2718 of the same code, to wit :

"A specialty is contract under seal, and is considered by the law as entered into with more solenmity, and consequently of higher dignity than ordinary simple contracts. All other contracts than those specified above are termed simple contracts."

Repeals section 1950 of our code, commonly called our statute of frauds, which adopts the language of the statute of frauds as to the power of agents.

Repeals our whole law of agency, arising from the common and statute law of partnerships, the law regulating sales at auction, sales of brokers and factors, the authority of masters of ships, and repeal or conflict all the laws by which contracts to be binding must be in writing, signed by the party to be charged thereby or his agent thereunto lawfully authorized, which do not require the agent's authority to be in writing. I know of no rule of construction which would give such authority to section 2182 of the Code of Georgia. We have lived under this code for thirteen years, and no such construction has ever been made or decided by her supreme court. This evidence of cotemporaneous construction should be conclusive, at least in doubtful cases.

DAMAGES.

a. The question of the measure of damages in this case is settled at common law in this court and in the State of Georgia. As early as Shepherd vs. Hampton, 3 Wheaton, 200, this court ruled in a cotton case "that the price of the article at the time it was to be delivered was the measure of damages," and this rule is not modified by the vendor's giving notice in advance of the time of delivery that he will not comply. In Leigh vs. Patterson,

8 Taunt., 340, Park, Justice, delivering the opinion of the court, said: "For anything that appears the plaintiff never agreed to rescind the contract, and the defendant might have delivered the tallow at any moment up to the 31st December, and the price on that day should have regulated the verdict of the jury." The same principle ruled in Philpott vs. Evans, 5 M. & W., 475, and numerous other cases. The judgment of the court in Philpott vs. Evans also answers the objection of appellees as to not tendering the money. Lord Campbell, in delivering the opinion in Cort vs. Ambergate R. Way Co., said that "the point decided in Ripley vs. McLeen was that a refusal of the buyer to accept in advance of the arrival of the cargo he had agreed to purchase was not necessarily a breach of the contract, but if unretracted down to the time when the delivery was to be made, it showed a continuing refusal dispending the vendor from the necessity of making a tender." The continuing refusal of the vendors to deliver the cotton in this case fully appears in this case, both by acts, declarations, and appeals both to the military and civil tribunals.—(See Record.) The cotton in this case was remote from the place where the sale took place. It was, by the contract, to be weighed and delivered where it was then in store, at five or six different points. A reasonable time for the purchaser to bring out the large amount of money to enable him to complete the purchase and receive the cotton is proven to have been not less than from two to three months, (see Schley's testimony in Record,) in which time the cotton advanced in price not less than one million of dollars, by the admissions of appellees in their same bill and other uncontroverted evidence. The record will show that the jury neither regarded the instructions of the court, except where we insist that his honor erred, nor the testimony in the case, but found for defendants against law and evidence.

ALEX. H. STEPHENS,
Counsellor for Appellant.

IN THE

Supreme Court of the United States.

No. 186.—October Term, 1875.

JOHN GARNER, Appellant,

vs.

WILLIAM A. REALL and JEREMIAH REALL, as Surviving Co-partners of Thomas S. Metcalf, Appellees.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

BRIEF FOR APPELLEES.

BENJ. H. HILL,

Attorney for Appellees.

Jno. L. Pumphrey, Printer, 9th and D streets, Washington, D. C.

IN THE

Supreme Court of the United States.

No. 136, October Term, 1875.

John Garsed, Appellant,

vs.

William A. Beall and Jeremiah Beall, as surviving co-partners of Thomas S. Metcalf, Appellees.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

Brief for Appellees.

Facts.

Shortly before the 6th day of February, 1865, General D. H. Hill, the confederate officer commanding at Augusta, Ga., ordered a large amount of cotton to be hauled out and piled in the fields adjacent to the city, to be burned in the event of Gen. Sherman's approach to Augusta. A large amount of cotton belonging to Thomas S. Metcalf, of that city, was included in the cotton so exposed. Gen. Sherman did not approach Augusta and the cotton was not burned, but was left in the fields.

On the 6th day of February, 1865, said Metcalf and George Schley entered into an agreement by which the

latter agreed to remove as much of Metcalf's cotton as he could to a place of protection, and in consideration therefor, was to be entitled to one-third of the cotton so removed and saved. Metcalf also entered into a like agreement with one John A. Moore.

(See answer of Schley and Metcalf, and exhibit B to Schley's answer, Record, page 41.)

Under this arrangement, Schley and Moore each saved a large number of bales—Metcalf's two-thirds amounting to over twenty-five hundred bales.—(Page 33.)

In June, 1865, Metcalf having sent several parties to Washington to procure his pardon, about which he was doubtful, became anxious to convert the cotton into money to avoid apprehended confiscation. Schley, deriving all his title from Metcalf (who was a confederate functionary,) participated in this apprehension and was willing to sell, and they agreed to sell the cotton (when sold) altogether.—(Page 31.)

John Garsed was then in Augusta to buy cotton and was an old acquaintance of George Schley. Schley offered him the cotton. Garsed was willing to entertain an offer to sell, and asked until the 6th of July to telegraph from Philadelphia his answer. Metcalf desired to get the money in hand, was unwilling to indulge. It was finally agreed between Metcalf and Schley, that Metcalf would sell to Schley at 100 dollars per bale, and wait on Schley until he could sell to Garsed, the indulgence to Garsed being from Schley, and the indulgence to Schley being from Metcalf. This is Schley's version and Metcalf does not materially vary from it on this point.—(Page 32–3.)

These terms as to the cotton in Augusta (all owned originally by Metcalf) being settled between Metcalf and Schley, Metcalf says he then made known to Schley the existence of a large lot of cotton which was stored in the name of another man and who alone had control of it, but in which he, Metcalf, had an interest, and which he believed could be bought for the same price cash—

100 dollars per bale. Schley's answer is to the effect that Metcalf said, he (M) had a big lot of cotton in which the Bealls had an interest and which he (Metcalf) was anxious to sell.—(Page 34.)

It is admitted by Schley that Metcalf handed him a memorandum in writing touching this big lot, and both admit that this memorandum was in the following language:

"At Eufaula, Alabama		1406	bales.
At Dawson, Georgia		1194	"
At Cuthbut,	"	10	"
At Fort Gains,	"	6	"
At Albany,	" (Cook & Co.)	2556	"
At "	" (Sims & Rust)	3522	"
At Americus,	"	1100	"
Total		9794	

"Believed to be in very good order as a whole lot, and to average 500 pounds to the bale. They belong to, and were bought by, a large planter in southwest Georgia, and can this day be bought for 20 cents a pound in greenbacks. They are mostly crop-lots entire, and, therefore, are desirable for spinners, as cottons in that section are long staple. There is but very little doubt but that they can be had at that price a short time hence, if a buyer should come out with cash and go down and see him and the cotton."—(Record, pages 1 and 34.)

Schley, in his answer, sets up that Metcalf, when he handed him the memorandum, gave him verbal authority to sell this third lot also to Garsed, and afterwards, on the same day, agreed to the terms of sale "same as in the other lot."—(Pages 34, 5, 6.) This Metcalf denies both in his answer and in his testimony, and insists that that he gave Schley the memorandum as information only, which he might show to Garsed to let him know where and from whom this large lot could be bought, and that he, Metcalf, had no authority to sell it, and so informed Schley.—(Page 44.)

Schley reduced his offer to writing, as follows:

"AUGUSTA, *June 28th*, 1865.

"Mr. JOHN GARSED.

"(No. 1.) DEAR SIR: I control 2,089 bales of selected cotton, which you saw this morning at my gin-house, which I agree to sell you delivered where it is, but re-weighed, at twenty-five cents per pound in greenbacks, payable in Augusta. You have the privilege by the 6th of July to close the trade by telegraph, and will, in that event, wait for the money until you can reach here with it.

"(No. 2.) I have 300 bales of my own, of the same lot, which you can have for eighteen cents in gold, payable here as soon as you can return with it.

"(No. 3.) I also control, and will have authority to sell by the 3rd of July, 9,778 bales of cotton, stored as follows:

1406 bales at Eufaula, Alabama.
1194 bales at Dawson, Georgia.
2556 bales at H. C. Cook's warehouse, Albany, Ga.
3522 bales at Sims & Rusk's warehouse, Albany, Ga.
1100 bales at Price's warehouse, Americus, Ga.

9,778 bales; which cotton I will sell, delivered where stored, at twenty-three cents per ponnd, the cotton to be reweighed, and payable in greenbanks. This purchase secured after I telegraph you.

"Very respectfully yours, &c.,

GEORGE SCHLEY.

"Freight and drayage will be about $5 per bale to Savannah, insurance one per cent."

After receiving this offer, Garsed went to pass the night with the brother of Schley, and to leave next morning for Philadelphia. In consequence, as he says, of verbal authority given by Metcalf late in the afternoon, Schley at night sent by his servant, Glasgow, the following note to Garsed:

"DEAR GARSED: Since you left town I saw the party controlling the large lot of cotton, No. 3, and it is agreed that if you telegraph to take it they will ratify what I

have agreed; so this makes it unnecessary for me to telegraph Monday. Write and send by Glasgow how I shall telegraph you, to whose care, or how, should it be necessary at any time. I wish you God speed in your journey. Too dark to see how to write more.

"Truly, your friend,

GEORGE SCHLEY.

"28*th June*, 8 o'clock."—(Page 42.)

Afterwards, on the 1st of July, Schley informed Metcalf of the substance of this Glasgow note to Garsed, when the Metcalf promptly said he was misunderstood and had given no such authority, (page 36,) whereupon Schley at once sent to Garsed the following telegram:

"AUGUSTA, *July* 1*st*, 1865.

"To JOHN GARSED, 109 Chestnut street, Philadelphia:

"I misunderstood parties giving you to sixth on No. 3, the nine thousand bale lot. If you wish the lot telegraph, and I will answer if they will sell. Answer immediately.

"GEORGE SCHLEY."

(Record, page 42.)

Mr. Garsed says he had not seen this telegram when he sent the telegram below of July 6th, but he admits this telegram was sent as he directed in the answer to the Glasgow letter, and that it was received at the office of R. Garsed & Brother before his arrival at Philadelphia, and that this cotton was for that firm. (See Garsed's whole answer to cross-questions on this telegram. Record, page 101–2.) Mr. Garsed admits he arrived in Philadelphia on the afternoon of the 5th of July, (page 99,) and saw his brother that evening.—(Page 102.)

On the 6th of July, Garsed telegraphed Schley as follows:

"PHILADELPHIA, *July* 6*th*, 1865.

"To GEORGE SCHLEY, Augusta, Ga.:

"I accept one, two, and three lots in gold and greenbacks. Will be sent by next vessel by Adams Ex-

press. Send forward the cotton. I will return by steamer on Wednesday next.

"JOHN GARSED."

(Page 29.)

Schley, immediately on its receipt, showed this telegram to Metcalf, who again repudiated so much of it as related to lot No. 3, and then dictated the following telegram, which Schley immediately sent to Garsed:

"AUGUSTA, *July 8th*, 1865.

"To JOHN GARSED, No. 109 Chestnut street, Philadelphia:

"Parties owning the nine thousand bale lot refuse to sell unless funds were here. If here to-day bargain could be closed, and probably can be on your arrival.

"GEORGE SCHLEY."

(Page 37.)

Mr. Garsed returned to Augusta July 24. He had not shipped the gold and greenbacks to pay for the three lots, as stated in telegram of July 6th. The contracts for lots 1 and 2 were, however, closed up and were paid for partly in money and chiefly in drafts on Robert Patterson & Co. of Philadelphia.—(Pages 33, 103.)

The appellant did not purchase any of the lots for himself, but for R. Garsed & Brother (page 101) and Robert Patterson & Co.—(Page. 104.)

The places at which the cotton comprising lot 3 was stored were over 200 miles from Augusta. All this cotton, except 1,100 bales stored at Americus, was bought by Jeremiah Beall in his own name, was stored in his name, and the warehouse receipts were in his name and his possession, and he alone had authority to buy it, control it, or sell it. Metcalf and William A. Beall had silent interests in the profits, but had neither the possession or control of any of it. Jeremiah Beall was a planter in southwestern Georgia when this cotton was bought and stored, and his residence was in Milledgeville, over one hundred miles from Augusta. The cotton stored at Americus was bought by Mr. Furlow in the name of William

A. Beall, was stored in his name, and he alone had authority to control or dispose of it. Metcalf had a silent interest in this lot of 1,100 bales. The interest owned by Wm. A. Beall was originally owned by Doughty & Beall, and Doughty's interest was bought out by his partner, William A. Beall.—(Record, pages 113 to 120.)

After the contracts for lots one and two were fully executed, Garsed being informed by Schley that Metcalf would not deliver the cotton in lot 3, applied to the military authorities for an order to compel the delivery. James B. Steedman was in command of the Military Department of Georgia, and C. H. Grosvener was his provost marshal general, with headquarters at Augusta.

Upon the affidavit of Schley, and without notice to either Metcalf or the Bealls, Grosvener decided to require the cotton to be delivered. This decision being made known by Grosvener to Metcalf, he asked for time and was then heard by counsel, Judge Gould, filed his own affidavit in direct contradiction to that of Schley, and had Schley cross-examined, but Grosvener says, "the case had been once decided, and he had no purpose in hearing further argument of it than to allow the bribery matter to culminate."

While this pretended hearing was being allowed, and before the order deciding the case was actually made, Metcalf and William A. Beall were endeavoring (as they understood it) to make a compromise of the case, which they were informed Grosvener had authority from Garsed to make, through one Leopold Cohn. Being made to believe that the decision would be against them without regard to the right of the case, and that under military orders the cotton would be removed and never paid for at all, they finally consented to pay over two hundred thousand dollars for a compromise and settlement, and actually paid eleven thousand dollars and gave a secured note for two hundred thousand dollars. At this stage of

the proceedings the order of August 2d (page 7) was issued, ordering the cotton to be delivered and paid for by the 1st of September. Immediately after issuing this order Metcalf and Cohn were arrested and imprisoned under charges of offering a bribe to an officer of the United States. A court-martial was ordered, and Metcalf was assured that the military was absolute, and there was no power to prevent his ruin. He was over sixty-five years old, and in bad health, and he felt that death must soon end his life if these usages were not arrested. He was perfectly willing to disclaim any thought of bribery, but he was advised by his counsel to sign, and did sign to procure his release, a statement in writing of apology to Grosvener, and also agreed to acquiesce in the order of August 2d and to take no step to disturb it. Cohn was released from prison by confessing the crime and vindicating Grosvener, and with orders to leave the state and not return without permission.—(pages 130 to 136.)

After this Metcalf was proceeding to obey the order of Grosvener. Some questions arose about the mode of payment and the price to be paid.

On the 31st of August Grosvener passed an order that the cotton be delivered and estimated at four hundred and fifty pounds to the bale, and paid for in drafts on New York at thirty days.

On the 1st day of September this order was revoked, and on the 5th of September another order was passed directing that the cotton be put in shipping order at the expense of Metcalf and the Bealls, and paid for as the different lots were put in order, reweighed, and delivered. —(Pages 9, 10.)

Metcalf was proceeding to obey this order, when, on the 9th of September, counsel for Jeremiah and William A. Beall arrived in Augusta. He at first applied to General Steedman for a hearing and that the military orders be revoked. Steedman, in the most violent manner, re-

fused the hearing, and declared he would imprison the counsel if he attempted to interfere with the orders by asking the courts for an injunction, and would imprison any judge who would grant an injunction.—(Pages 12, 124–5.)

But William A. and Jeremiah did apply for an injunction against John Garsed, George Schley, and Thomas S. Metcalf, enjoining the two first from taking possession of the cotton and enjoining the last from delivering the cotton under military orders. Metcalf, through fear and the advice of his counsel, refused to become a party complainant, and was made a party defendant.—(Page 130.)

The injunction was granted on the 16th of September by Judge Iverson L. Harris, at Milledgeville, and was filed in the proper office at Augusta (Richmond county) on the 18th. While the bill was being prepared for service, and before service, Gen. Steedman, on the 20th of September, revoked all the military orders touching this cotton, and directed that all the cotton which had been delivered under them should be returned to the owners, Metcalf and the Bealls, and thereupon counsel for Bealls informed Steedman the injunction bill would be discontinued, and no further order was given for its service. George Schley, however, requested that the bill should not be dismissed until he could file his answer to the charges involving his own character, and this courtesy was extended to him as a member of the bar.—(Page 126.)

On the 11th of October, Garsed also filed his answer to the bill, in which he insisted he had bargained for the cotton through Schley, and in his answer he prayed that Metcalf and the Bealls be decreed specifically to perform their contract, or if that could not be done, that he be decreed a compensation in damages,—(Page 28.)

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Grosvener against Metcalf and the Bealls, and he was ready to do whatever Grosvener might deem necessary to be done to vindicate his personal and official conduct in the matter.

To this Grosvener replied by letter, dated February 24th, saying he had refiled the charges of bribery against Metcalf, the Bealls, and Cohn, and should insist that they be carried to Washington City and tried by military commission, unless they carried out in good faith the agreement made at the time he withdrew the former proceedings; but that "any arrangement they may make to compromise with Mr. Garsed, and which includes a full retraction of their abuse of myself and complete vindication of my official action, I will consider satisfactory; but short of that, I will consent to nothing but their arrest and trial."—(Pages 136–7.)

The letter of Steedman bears date at Washington City, and that of Grosvener, at Athens, O., but they were both in envelopes of the St. Nicholas Hotel, N. Y.—(Pages 127, 131.)

A few days after the last bears date, these letters were in the hands of counsel or agents for Garsed, in Augusta, Georgia, and were used in an effort to convince Metcalf and the Bealls that they would certainly be arrested and carried to Washington City to be tried by a military commission unless they settled with Garsed, and that they could settle by paying the sum of four hundred and seventy-five thousand dollars.

Counsel for Metcalf and the Bealls at once proceeded to Washington, and after thorough search found that no such charges had been refiled, and that no such arrest and trial would be permitted.—(Pages 126–7, 131.)

On the 27th of July, 1866, an act was passed by Congress authorizing any non-resident defendant to a suit in a state court to have the same transferred to the United States court on the terms therein prescribed.—(14 Stats., 306.)

On the 24th of September, 1866, counsel for Bealls sent to the clerk of Richmond Superior Court the following order:

"William A. Beall and Jeremiah Beall
vs.
John Garsed, George Schley, and Thomas S. Metcalf.

"Bill for injunction, &c., in Richmond Superior Court, returned to April term, 1866.

"The attempt to seize and remove the cotton under military orders by the defendants, as set forth in the above bill, having been abandoned, the complainants do hereby dismiss the bill. September 24, 1866.

"BENJAMIN H. HILL,
"*Solicitor for Complainants.*"

The dismissal was duly entered by the clerk under the provisions of the Code of Georgia.—(Page 58.)

On the 17th of October counsel for Garsed moved a rule nisi to show cause why this order of dismissal should not be revoked, and the case reinstated. On the 26th of October this rule was heard and refused. In pronouncing his opinion on this motion the judge held that complainants had a right to dismiss their bill, but that the dismissal of the original bill did not dismiss the cross-bill of Garsed made by his answer, and that the case made by that answer must be retained in court with Garsed as the complainant and the Bealls and Metcalf as defendants. Schley was not retained as a party.—(Pages 53 to 57.)

On the 2d day of March, 1867, an act was passed by Congress amending the act of July 27, 1866, so as to authorize any non-resident plaintiff or defendant in a suit in a state court to transfer cases to the United States court on the terms therein prescribed.—(14 Stats., 558.)

Under this act as amended John Garsed, in April, 1867, transferred this case to the United States Circuit Court for the Southern District of Georgia.—(Pages 51-'2-'3.)

When the motion was made to enter the case in the Circuit Court of the United States, at the May term, 1867, objections were made by appellees and by Metcalf that no case was pending in the state court which could be transferred under the said act of Congress. These objections were heard and overruled.—(Page 60.)

Demurrers were also filed to the jurisdiction of the court of the case made by Garsed's answer in the nature a cross-bill, and for the want of equity; and by Metcalf that the case set up by Garsed was void under the statute of frauds of the State of Georgia.

These demurrers were overruled November term, 1868. —(Pages 63–'4.)

It was agreed by counsel, and so ordered by the court, that the cause on the pleadings should be tried on the 6th day of May, 1869, and it was also agreed and ordered that testimony might be taken before Joseph P. Carr as examiner.—(Page 65.)

On the 5th day of May, C. H. Grosvener, the provost marshal general of Steedman, and Stinchcomb, then Grosvener's clerk, ~~and since his father in law,~~ and both of the State of Ohio, appeared in person before Mr. Carr, at Savannah, to give testimony. They both testified to admissions by Metcalf to them in July, 1865, that he had sold, or authorized Schley to sell, this cotton to Garsed. —(See Record, pages 82 to 112.)

This testimony necessitated a continuance of the case, which was granted only on strong showing to contradict this testimony.—(Page 66.)

This testimony was exhibited by interrogatories to Metcalf, and he testified it was "utterly untrue and without any foundation in fact." He also testified that certain remarks testified to by other witnesses related to the Augusta cotton, and not to lot No. 3.

The answers of appellees denied utterly the alleged contract of sale—set up the statute of frauds of Georgia;

and the answer of William A. Beall especially charged that the whole case was a conspiracy:

1. Between Garsed, Schley, and Grosvener to seize and appropriate the cotton by their own testimony and military orders, and without paying anything for it; and that the charge of bribery was gotten up through Cohn as a tool, to enable the conspirators to accomplish their fraud.

2. Between Garsed, Grosvener, and Steedman, aided by others not named, to alarm the appellees by the threatened military trials at Washington, with a purpose to force them to pay money to avoid it.

3. Between Garsed and Grosvener, aided by Stinchcomb and others, to procure a decree by false testimony held back until the final trial, when it might be too late to correct it.—(Pages 69 to 73.)

The case was argued before Judge Erskine at the November term, 1869, on the pleadings and evidence.

The judge reserved his decision until the April term, 1871, when he delivered an elaborate opinion on the legal questions raised in the case. Being unwilling to determine the facts involved, in view of the very contradictory testimony, he made up seven issues of fact to be submitted to and passed upon by a jury. This trial before the jury came on at the November term, 1871, when three other issues of fact—two, eighth and tenth, by Garsed, and one, ninth, by Bealls—were added, and the ten issues of fact were submitted to a jury and a verdict was rendered on each. Whereupon, at said term, after considering the pleadings, evidence, and the verdict of the jury, the court rendered a decree in favor of the appellees, dismissing the case, including the cross-bill, at the cost of said appellant.—(Page 180.)

NOTE.—The affidavit of Metcalf and the examination of Schley, before Grosvener; the interrogations of W. A. Beall and T. E. Metcalf, taken in October, 1868, and of Metcalf, taken in August, 1869, and the order of court submitting the three additional issues of fact, are omitted from the record. See reference to this evidence.—(Record, pages 14, 25, 26, 88, 89, 138, 129, 144.)

In October, 1873, Garsed entered an appeal to this court.—(Pages 182–3.)

ARGUMENT.

1. We think this case should not have been entertained in the courts of the United States.

Conceding, for the argument, the constitutionality of the acts of July 27, 1866, and of March 2, 1867, it must be conceded that those acts do not change, nor propose to change, the *organization* of the courts of the United States and their forms and methods of proceedings. The party seeking to remove a case from the state courts into the United States courts, under those acts, must see to it that his case is one which can be tried in the latter courts.

(14 Statutes at Large, 306, 558.)

The issue in this case is one in which the parties are entitled, by the Constitution, to a jury trial. Jury trials in equity causes are provided for in the state court.

(Code of Ga., section 4206.)

There are no such provisions in the laws organizing the United States courts.

In the next place this is a cross-bill made out of an answer to an original bill. It is also an attempt to try a case made by a cross-bill after the original bill has been dismissed. These extraordinary proceedings are provided for by the state laws (Code of Georgia, § 4181), but they are wholly unknown to the courts of the United States.

2. If the case could be entertained at all, then it ought to have been dismissed on the demurrer.

The 16th section of the judiciary act *forbids* the trial by the United States courts in equity of a case in which there is a plain and adequate remedy at law.

1 Statutes at Large, 82.

See, also, sections 12 and 13.

If there is not a plain and adequate remedy at law for the recovery of personal property and for the recovery of damages for the breach of contract for the delivery of personal chattels, then there is no case where the remedy at law is plain and adequate, and this section of the judiciary act is based on a myth.

There are cases in the books which show a bill in equity for a specific performance of a contract for the delivery of chattels, or for the recovery, in specie, of personal chattels, will be entertained. But in all such cases there are special facts which show that the money value of the personal chattels would not compensate the owner.

1 Peters, 232.
3 Peters, 446.
5 Peters, 503.
15 Peters, 299.
19 Howard, 271.
Jeremy's Eng. Jur., 424.
Story Eq. Pl., § 398.

never

3. But it is needless to waste time on the questions of law arising in this record. A jury has found by their verdict that the case alleged never had any existence, and, of course, never had any merit. The jury say there was no authority, verbal or written, in Schley to sell lot 3; that no sale was made; that Garsed never offered to perform his part of the alleged contract, and never was in condition to perform it, and has sustained no damages by the pretended breach.—(Record, 178–9.)

If these were questions on which the jury had a right to pass, then their verdict must stand as final and conclusive. They cannot be inquired into by this court except according to the course of the common law. The course of the common law was by motion for a new trial and a writ of error on the rulings of the court below, and an assignment of errors in this court. There was no motion for a new trial in the court below, no writ of error

on the rulings of that court, and no assignment of errors here.

Cases in equity may be brought here by appeal, but common-law cases and issues cannot be called equity cases and made so by the calling.

We respectfully insist that this single view must close up this case.

4. But if the verdicts of the jury are to be regarded as only findings to instruct the conscience of the chancellor, then we say the instructions in this case were correct, and the conscience of the chancellor must accept them.

The conversations which several witnesses testified to having had with Metcalf touching the sale of his cotton, are clearly shown to have had reference to lots 1 and 2.

These witnesses knew nothing of the different lots of cotton, and remarks made by Metcalf (merely casual at the time) in reference to cotton he has ~~since~~ denied authorizing Schley to sell, are sought to be applied to lot 3, which his very memorandum handed to Schley shows he claimed no dominion over.

Affidavit and testimony of Metcalf, Record, page 67.
Freidman's evidence, page 49.
Schley's answer, page 31.

The jury fully weighed this evidence after full argument by both sides.

Mr. Schley also admitted that he misunderstood Metcalf in relation to this lot, and he communicated this fact to Garsed several days before the day fixed for offers to be acepted or rejected, and the telegram giving this notice reached Garsed's office (the place to which he directed telegrams to be sent) before Garsed himself reached Philadelphia.

Record, page 42.
Garsed's testimony, page 101.

We thus have but two witnesses left who furnish any evidence whatever that Schley had authority from Metcalf to sell lot 3. These two witnesses are C. H. Grosvener, the provost marshal general, and his clerk ~~and relative~~, one Stinchcomb. The latter testifies but vaguely, and needs no further notice.—(Record, page 111.)

Grosvener does swear positively that Metcalf admitted to him that he had authorized Schley to sell the cotton, and to write what is known as the Glasgow letter.—(Record, pages 80–82.) It is clear the jury did not believe Grosvener, and it is equally clear that, under the rules of evidence, they could not believe him.

Metcalf testified positively that he never made such admissions to Grosvener, and that Grosvener's statements on this subject were "utterly false and without the slightest foundation in fact."

If the question was, which could we believe, Metcalf or Grosvener, and there was no other evidence to settle the issue of credibility, even then the jury were fully authorized to believe Metcalf; for while it is true that Metcalf was a party in interest, the position of Grosvener was far more discrediting. Grosvener is distinctly charged in the pleadings with being a conspirator to defraud.

1. That he sought to use the power of his office to take this cotton.

2. That he aided and encouraged the manufacture of a false charge of bribery to enable him to get Metcalf in his power.

3. That after getting Metcalf in his power, and in jail under this charge of offering a bribe, he readily released Metcalf from the charge and from jail on getting an agreement in writing that he (Metcalf) would submit to Grosvener's decision taking his cotton.

4. That he violated his own decision, and the terms of the pretended contract itself, by ordering the cotton to be delivered without previous payment, and by ordering Metcalf to accept thirty-day drafts on New York in pay-

ment; and these and other oppressions he sought to accomplish by threatening a renewal of the charge of bribery if Metcalf made any trouble! The delivery of cotton in advance of payment was only prevented by the positive interference of Steedman.

5. After he was defeated in these schemes by the bill of injunction, and by the order of the Secretary of War, he then made false pretences that he had authority from the Secretary of War to renew the charge of bribery, including in it the Bealls; that the parties would be carried to Washington and tried by military commission, and that he would withdraw the charges and relieve the parties of all this oppression, if they would carry out his (Grosvener's) original decision or settle to the satisfaction of Garsed! And Garsed offered to be satisfied with nearly have a million of dollars!

See letters, pages 136–7.

6. Having failed to alarm the parties by this threat, he then went from Ohio to Savannah, taking his clerk ~~and relative~~ with him, and then developed himself into a witness and testified to the pretended admissions of Metcalf, as shown in the record.

The urgent attempt to force the case to a final hearing before this testimony could be investigated and weighed shows that appellant's own counsel had no confidence in its truth.—(Motion to continue, pages 66–'7.)

With such a record how could an honest jury believe such a witness, even if he had been contradicted only by Mr. Metcalf? But the other undisputed evidence in the record does most conclusively and overwhelmingly contradict this witness, Grosvener, in his statement that Metcalf admitted to him that he had authorized Schley to sell the cotton in lot 3, and asked him (Grosvener) to take jurisdiction of the case.

1. In the trial before Grosvener, Metcalf appeared in person and made written affidavit in Grosvener's pres-

ence that he had never authorized Schley to sell this lot 3. This affidavit was produced on this trial. Grosvener admitted it was read before him, and Grosvener did not then make known that Metcalf had made such admissions.—(Record, page 89; Gould's evidence, page 129.) Schley's answer makes no allusion to the scene testified to by Grosvener, and shows Metcalf never saw the Glasgow letter.

2. Grosvener, in 1865, had Metcalf arrested and imprisoned under a charge of offering him a bribe to decide he had not sold the cotton to Garsed. Is it credible that Metcalf was privately telling Grosvener that he had sold Garsed the cotton, and was, at the same time, committing the huge crime of bribery, and losing the large sum of two hundred thousand dollars to induce Grosvener to decide that he had not sold it?

3. If the testimony of Grosvener, that Metcalf admitted to him he had sold the cotton, or authorized Schley to sell it, was true, then Metcalf was guilty of perjury, when he, at the same time, made affidavit, before Grosvener himself, that he had not sold the cotton, and had not authorized Schley to sell it. If this crime of perjury was so well known to Grosvener and Stinchcomb, why such efforts to get up a charge of offering a bribe, to get the control of Metcalf? And yet, though the record shows that Grosvener several times used this charge of bribery to make Metcalf "carry out his decision," we never hear of the crime of perjury until this man, Grosvener, failing to accomplish his end by power and by threats, appears in Savannah at the last moment to reach the end by his own testimony as a witness!

4. The testimony of Grosvener is also contradicted by Judge Gould, who testifies positively that certain statements made by Grosvener in his testimony as made to him (Gould) and in his presence, were never heard of by

him until stated by Grosvener in his examination as a witness in this case.

Read all of Judge Gould's answer, page 129–131.

5. But the written memorandum given by Metcalf to Schley, and which is admitted by all, shows in languge that Metcalf had no authority himself to sell the cotton, and disclaimed all title to it. This memorandum says: "They *belong to* and were bought by a large planter in southwestern Georgia, and can this day be bought for 20 cents, for greenbacks. * * There is very little doubt but that they can be had at that price a short time hence, if a buyer should come *out with the cash and go down and see him and the cotton.*"—(Record, page 41.)

The testimony of both the Bealls and Metcalf show that this statement was strictly true. The cotton was bought alone by Jeremiah Beall and was stored in his name. The receipts were issued in his name, and he alone had authority to sell the cotton.

See J. Beall's testimony, Record, page 114.

6. But if, in the face of this, it be pretended that Metcalf authorized Schley to sell the cotton, not even Grosvener is able to say the authority was in writing, and under the Code of Georgia, as decided by Judge Erskine, no verbal authority was sufficient.

Code of Georgia, section 2182.

Judge Erskine's opinion, Record, page 159.

So, in any and every view of the case, the decision rendered by the court below must be affirmed with costs.

BENJ. H. HILL,
Atty. for Appellees.